

BOARD OF ADJUSTMENT, PANEL A
TUESDAY, OCTOBER 16, 2012
AGENDA

BRIEFING	5/E/S	11:00 a.m.
LUNCH		
PUBLIC HEARING	COUNCIL CHAMBERS, 1500 MARILLA STREET	1:00 P.M.

David Cossum, Assistant Director
Steve Long, Board Administrator

MISCELLANEOUS ITEMS

	Approval of the Tuesday, September 18, 2012 Board of Adjustment Public Hearing Minutes	M1
	Consideration and approval of Panel A's 2013 Public Hearing Schedule	M2
BDA 112-040	2612 Boll Street REQUEST: Application of Herbert B. Story, Jr., represented by Michael R. Coker, to extend the time to file an application for a building permit or certificate of occupancy an additional 6 months beyond the 180 days from the Board of Adjustment's favorable action on requests for a variance to the front yard setback regulations and a special exception to the landscape regulations	M3
BDA 112-058	2701 McKinney Avenue REQUEST: Application of Herbert B. Story, represented by Michael R. Coker, to extend the time to file an application for a building permit for certificate of occupancy an additional 6 months beyond the 180 days from the Board of Adjustment's favorable action for requests for a variance to the front yard setback regulations and a special exception to the landscape regulations	M4

UNCONTESTED CASES

BDA 112-095	10011 N. Central Expressway REQUEST: Application of Ed Simons for a variance to the front yard setback regulations	1
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BDA 112-104	1030 N. Zang Boulevard REQUEST: Application of John Chong, represented by Tailim Song Law Firm, for variances to the front yard setback regulations	2
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REGULAR CASES

BDA 112-094	6506 Crestmere Drive REQUEST: Application of John Pozadzides, represented by Keith Redmon, for variances to the side yard setback and off-street parking regulations	3
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BDA 112-100	330 Bedford Street REQUEST: Application of Jonathan Vinson of Jackson Walker for variances to the front yard setback regulations	4
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HOLDOVERCASES

BDA 101-068	1809 Rock Island Street REQUEST: - Application of Tommy Mann of Winstead, PC, to appeal the decision of an administrative official	5
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BDA 101-069	1809 Rock Island Street REQUEST: Application of Tommy Mann of Winstead, PC, to appeal the decision of an administrative official	6
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BDA 101-070	1803 Rock Island Street REQUEST: Application of Tommy Mann of Winstead, PC, to appeal the decision of an administrative official	7
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EXECUTIVE SESSION NOTICE

The Commission/Board may hold a closed executive session regarding any item on this agenda when:

1. seeking the advice of its attorney about pending or contemplated litigation, settlement offers, or any matter in which the duty of the attorney to the Commission/Board under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act. [Tex. Govt. Code §551.071]
2. deliberating the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.072]
3. deliberating a negotiated contract for a prospective gift or donation to the city if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.073]
4. deliberating the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or to hear a complaint or charge against an officer or employee unless the officer or employee who is the subject of the deliberation or hearing requests a public hearing. [Tex. Govt. Code §551.074]
5. deliberating the deployment, or specific occasions for implementation, of security personnel or devices.. [Tex. Govt. Code §551.076]
6. discussing or deliberating commercial or financial information that the city has received from a business prospect that the city seeks to have locate, stay, or expand in or near the city and with which the city is conducting economic development negotiations; or deliberating the offer of a financial or other incentive to a business prospect. [Tex. Govt. Code §551.086]

(Rev. 6-24-12)

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel A, September 18, 2012 public hearing minutes.

MISCELLANEOUS ITEM NO. 2

To approve the Board of Adjustment Panel A's 2013 public hearing calendar (see Attachment A).

MISCELLANEOUS ITEM NO. 3

FILE NUMBER: BDA 112-040

REQUEST: To extend the time period in which to file an application for a building permit or certificate of occupancy an additional 180 days (or 6 months) beyond the 180 days from the Board of Adjustment's favorable action on a request for variance to the front yard setback regulations and a special exception to the landscape regulations granted by Board of Adjustment Panel A on May 15, 2012, subject to a revised site plan dated 5-15-12 and submitted landscape plan dated 5-15-12.

LOCATION: 2612 Boll Street

APPLICANT: Herbert B, Story, Jr.
Represented by Michael R. Coker

STANDARD FOR EXTENDING THE TIME PERIOD IN WHICH TO APPLY FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY:

- The Dallas Development Code states:
 - The applicant shall file an application for a building permit or certificate of occupancy within 180 days for the date of the favorable action of the board, unless the applicant files for and is granted an extended time period prior to the expiration of the 180 days. The filing of a request for an extended time period does not toll the 180 day time period. If the applicant fails to file an application within the time period, the request is automatically denied without prejudice, and the applicant must begin the process to have his request heard again.
- The *Board of Adjustment Working Rules of Procedure* state the following with regard to extensions of the time period for making application for a building permit or certificate of occupancy:
 - A panel may not extend the time period for making application for a building permit or certificate of occupancy beyond 180 days from the date of its favorable action unless it makes a *specific finding* based on evidence presented at a public hearing that there are no substantially changed conditions or circumstances regarding the property to the satisfaction of the panel. In no event, however, may the board extend the time period beyond 18 months from the date of its favorable action.

Timeline:

May 15, 2012: The Board of Adjustment Panel A granted a request for variance to the front yard setback regulations and a special exception to the

landscape regulations and imposed the submitted revised site plan dated 5-15-12 and submitted landscape plan dated 5-15-12 as conditions to the requests. The case report stated that requests were made in conjunction with constructing and maintaining a “raised planting bed” structure, a staircase structure, and the westernmost wall of a “proposed two story brick addition” structure (with an approximately 600 square foot building footprint that is proposed to be located on the lot immediately to the east/adjacent to the subject site).

May 22, 2012: The Board Administrator wrote the applicant’s representative a letter documenting the May 15th action of the board, and noting to “Contact Building Inspection at 320 E. Jefferson, Room 105 to file an application for a building permit or certificate of occupancy within 180 days from the date of the favorable action of the board.”

October 2, 2012: The applicant’s newly designated representative submitted a letter to staff requesting that the Board extend the time period in which to file an application for a building permit or certificate of occupancy an additional 180 days (or 6 months) beyond the 180 days they had to do so from the May 15, 2012 favorable action (see Attachment A).

October 4, 2012: The Board Administrator emailed the applicant’s newly designated representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the April 6th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- an attachment of materials related to BDA 112-040 (see Attachment B); and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

MISCELLANEOUS ITEM NO. 4

FILE NUMBER: BDA 112-058

REQUEST: To extend the time period in which to file an application for a building permit or certificate of occupancy an additional 180 days (or 6 months) beyond the 180 days from the Board of Adjustment's favorable action on a request for certain variances to the front yard setback regulations and a special exception to the landscape regulations granted by Board of Adjustment Panel A on May 15, 2012, subject to a revised site plan dated 5-15-12 and submitted landscape plan dated 5-15-12.

LOCATION: 2701 McKinney Avenue

APPLICANT: Herbert B, Story, Jr.
Represented by Michael R. Coker

STANDARD FOR EXTENDING THE TIME PERIOD IN WHICH TO APPLY FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY:

- The Dallas Development Code states the following with regard to board action:
 - The applicant shall file an application for a building permit or certificate of occupancy within 180 days for the date of the favorable action of the board, unless the applicant files for and is granted an extended time period prior to the expiration of the 180 days. The filing of a request for an extended time period does not toll the 180 day time period. If the applicant fails to file an application within the time period, the request is automatically denied without prejudice, and the applicant must begin the process to have his request heard again.
- The *Board of Adjustment Working Rules of Procedure* state the following with regard to extensions of the time period for making application for a building permit or certificate of occupancy:
 - A panel may not extend the time period for making application for a building permit or certificate of occupancy beyond 180 days from the date of its favorable action unless it makes a specific finding based on evidence presented at a public hearing that there are no substantially changed conditions or circumstances regarding the property to the satisfaction of the panel. In no event, however, may the board extend the time period beyond 18 months from the date of its favorable action.

Timeline:

May 15, 2012: The Board of Adjustment Panel A granted a request for a variance to the front yard setback regulations made in conjunction with

constructing and maintaining a “proposed two story brick addition” structure with an approximately 600 square foot building footprint, denied a request for a variance to the front yard setback regulations made in conjunction with remedying the nonconforming aspect of the existing nonconforming structure that is located in the site’s two front yard setbacks along McKinney Avenue and Boll Street, and granted a special exception to the landscape regulations. The Board imposed the submitted revised site plan dated 5-15-12 and submitted landscape plan dated 5-15-12 as conditions to these granted requests.

May 22, 2012: The Board Administrator wrote the applicant’s representative a letter documenting the May 15th action of the board, and noting to “Contact Building Inspection at 320 E. Jefferson, Room 105 to file an application for a building permit or certificate of occupancy within 180 days from the date of the favorable action of the board.”

October 2, 2012: The applicant’s newly designated representative submitted a letter to staff requesting that the Board extend the time period in which to file an application for a building permit or certificate of occupancy an additional 180 days (or 6 months) beyond the 180 days they had to do so from the May 15, 2012 favorable action (see Attachment A).

October 4, 2012: The Board Administrator emailed the applicant’s newly designated representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the April 6th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request;
- an attachment of materials related to BDA 112-058 (see Attachment B); and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

FILE NUMBER: BDA 112-095

BUILDING OFFICIAL'S REPORT:

Application of Ed Simons for a variance to the front yard setback regulations at 10011 N. Central Expressway. This property is more fully described as Lot 31A in City Block 7294 and is zoned MU-3(SAH), which requires an urban form front yard setback of 35 feet for that portion of the structure over 45 feet in height. The applicant proposes to construct and maintain a structure and provide an 18 foot urban form front yard setback, which will require a variance of 17 feet.

LOCATION: 10011 N. Central Expressway

APPLICANT: Ed Simons

REQUEST:

A request for a variance to the urban form front yard setback regulations of 17' is requested in conjunction with constructing and maintaining an approximately 54' high multifamily residential structure (The Fountains Apartments) on a site that is undeveloped.

The applicant is returning with the exact same application granted in 2009 (BDA 078-071). Dallas Development Code states that if the applicant fails to file an application for a building permit or certificate of occupancy within 180 days from the date of the favorable action of the board, the request is automatically denied without prejudice. The applicant did not file for a building permit with the 180 days, thus the applicant must begin the variance process again.

STANDARD FOR A VARIANCE:

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

- (A) not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;
- (B) necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and

(C) not granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the site plan and elevation is required.

Rationale:

- The site is restricted in its developable area and different from other parcels of land given a 16’ wide D.P. & L. easement along its western boundary. This feature creates hardship on the lot and prohibits the applicant’s ability to construct/maintain development on the site that is commensurate with the development upon other parcels of land in districts with the same MU-3 zoning classification.
- Granting the variance to the urban form front yard setback regulations (with the suggested conditions imposed) would not be contrary to the public interest since the portion of the proposed structure to be “varied” is:
 - Only approximately 54’ in height or 9’ above/beyond the 45’ height in which the additional 20’ urban form front yard setback begins; and
 - Located immediately adjacent to over 300’ of right-of-way for Central Expressway and its related service roads.
- Granting this variance request would merely restore or reinstate a variance granted by Board of Adjustment on this site in June of 2009 where the only reason for a new application is because the applicant had not filed for a building permit within 180 days from June of 2009.

BACKGROUND INFORMATION:

Zoning:

Site: MU-3(SAH) (Mixed Use, Standard Affordable Housing)
North: GO (A) (General Office)
South: GO (A) (General Office)
East: GO (A) (General Office)
West: MU-3(SAH) (Mixed Use, Standard Affordable Housing)

Land Use:

The subject site is undeveloped. The area to the north is developed with a communications use (Channel 11); the area immediately east is the North Central Expressway; the area to the south is developed with a hotel; and the area to the west is developed with multifamily use.

Zoning/BDA History:

- | | |
|---|---|
| <p>1. BDA 001-193, Property located at 10011 N. Central Expressway (the subject site)</p> | <p>On April 26, 2001, the Board of Adjustment Panel A took the following actions: 1) denied without prejudice a request for a parking special exception of 2 spaces; 2) granted a request for a variance to the front yard (urban form) setback regulations of 9' (subject to compliance with the submitted site plan and elevations); and 3) granted a request for a variance to the side yard (tower spacing) setback regulations (subject to compliance with the submitted site plan and elevation). The case report stated that these requests were made in conjunction with constructing/maintaining a four-story, 60' high apartment building (Park Fountain Apartments).</p> |
| <p>2. BDA 078-071, Property located at 10011 N. Central Expressway (the subject site)</p> | <p>On May 20, 2008, the Board of Adjustment Panel A granted a request for a variance to the front yard (urban form) setback regulations of 17' and imposed the submitted site plan and elevation as conditions to the request. The case report stated that these requests were made in conjunction with constructing and maintaining a 60' high multifamily residential structure (Parc Fountains Apartments) on a site that is undeveloped.</p> |
| <p>3. BDA 089-075, Property located at 10011 N. Central Expressway (the subject site)</p> | <p>On June 16, 2009, the Board of Adjustment Panel A granted a request for a variance to the front yard (urban form) setback regulations of 17' and imposed the submitted site plan and elevation as conditions to the request. The case report stated that these requests were made in conjunction with constructing and maintaining an approximately 54' high multifamily residential structure (The Fountains Apartments) on a site that is undeveloped</p> |

Timeline:

August 23, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

September 12, 2012: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."

September 19, 2012: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the September 26th deadline to submit additional evidence for staff to factor into their analysis; and the October 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

October 2, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Building Inspection Senior Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

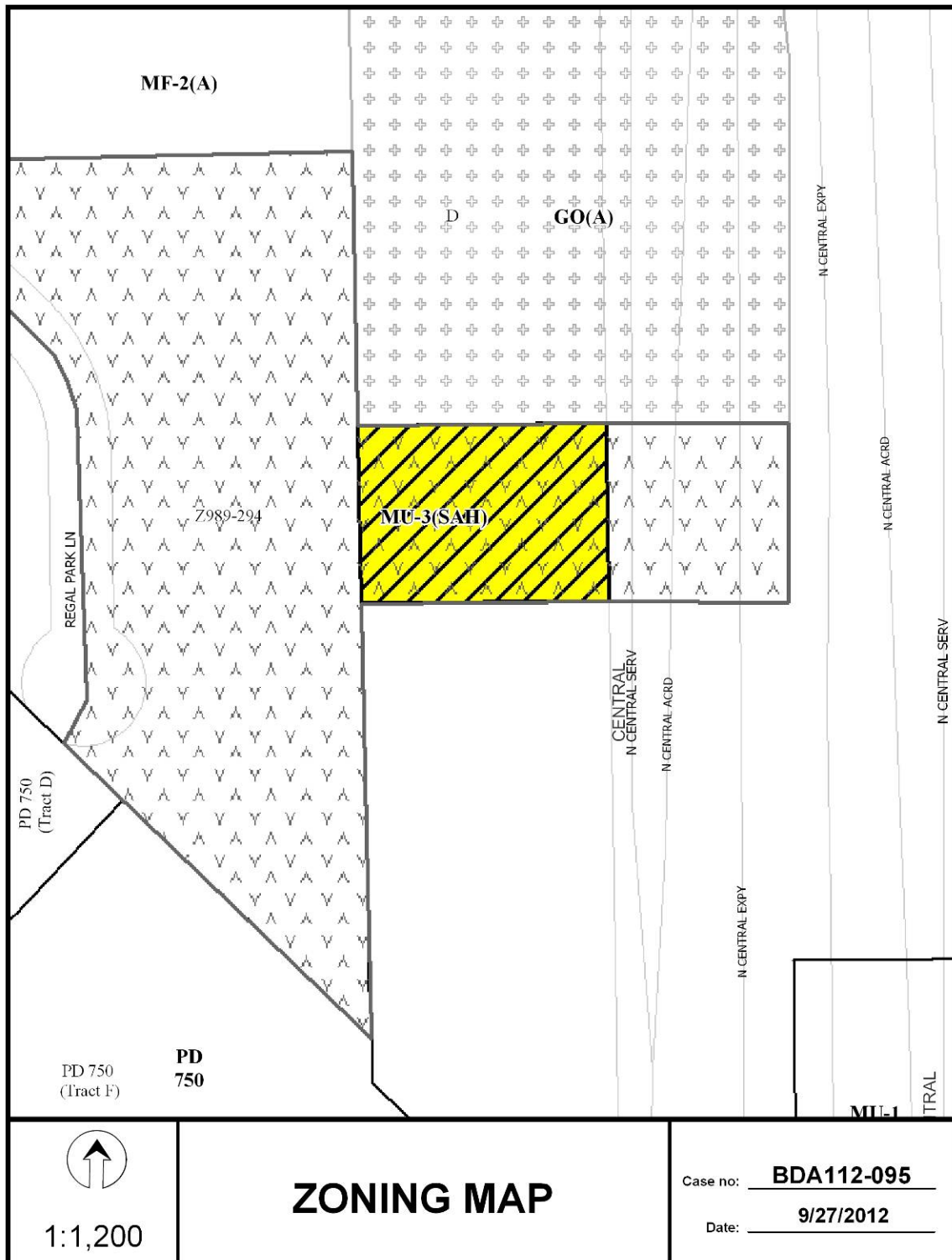
No review comment sheets with comments were submitted in conjunction with this application.

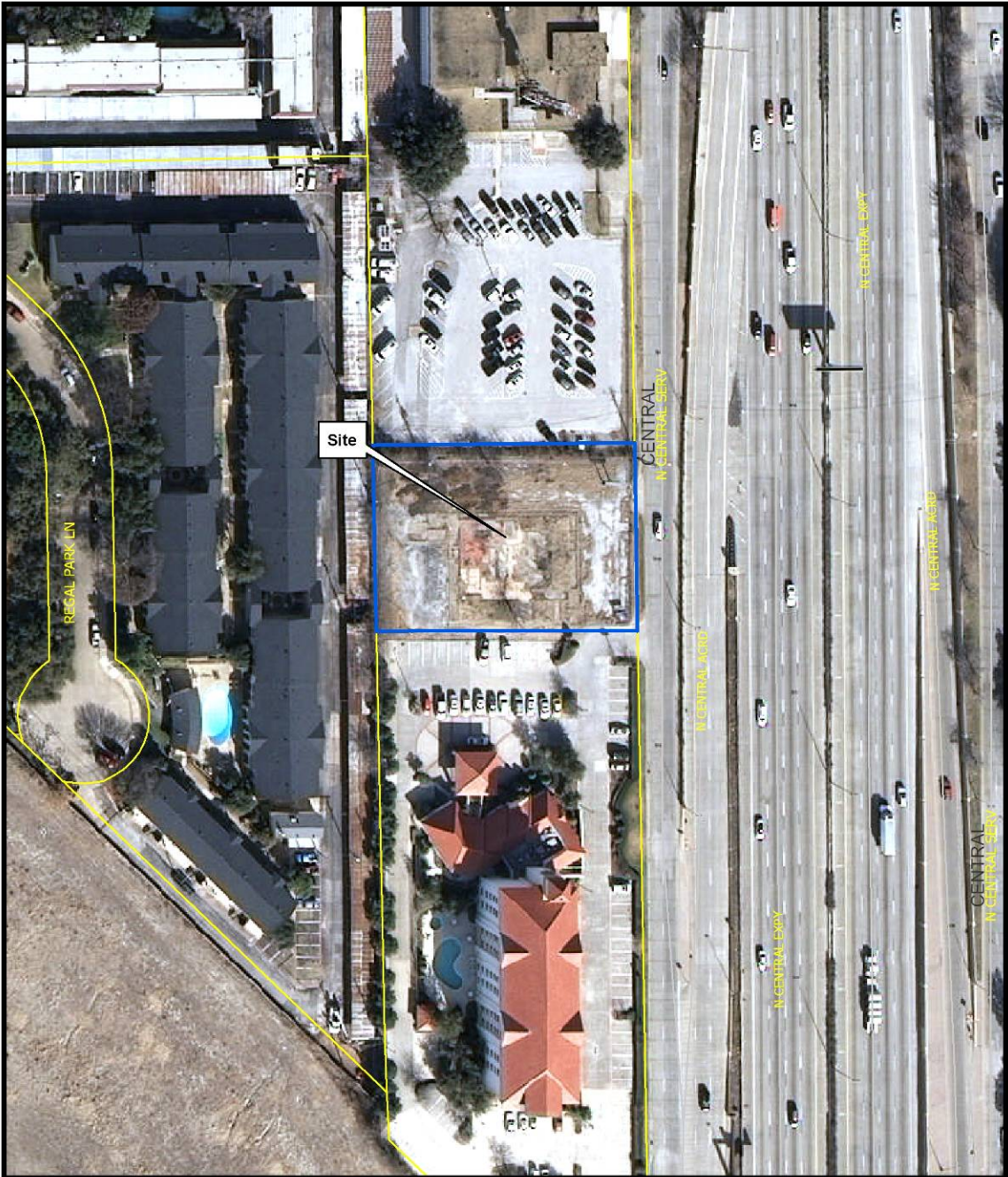
GENERAL FACTS/STAFF ANALYSIS:

- This variance request focuses on restoring or reinstating an urban form front yard variance granted by the Board of Adjustment Panel A in June of 2009 – a request that returns to the board given that the applicant did not apply for a building permit or certificate of occupancy within 180 days from the board's favorable action.
- Lots zoned MU-3 are required to provide a 15' front yard setback and an additional 20' setback for any portion of a structure above 45' in height.
- The applicant has submitted the same site plan and elevation as in June of 2009 indicating a structure that is 53' 8" in height located as close as 18' from the site's front property line. Although the proposed structure complies with the 15' front yard setback for the portion 45' in height or less, the structure above 45' in height (its 4th level of residential use) is located 17' into the 35' urban form front yard setback.
- The additional 20' setback provision for structures or portions of structures higher than 45' in height was enacted to discourage a canyon effect that a structure may

create once it exceeds a specific height, and that this additional front yard setback was enacted to ensure openness, light, and airflow between tower structures.

- The subject site is flat, rectangular in shape (202.5' x 142'), and, according to the application, 0.6599 acres in area. The applicant contends that the site's 16' D.P. &L. easement along its west side creates limitations to the development of the site. The site is zoned MU-3 (SAH) (Mixed Use)(Standard Affordable Housing). There are public deed restrictions on this site that imposes a maximum structure height to 60 feet. (The applicant has informed the Board Administrator that the proposed development does not conflict with these publicly-recorded deed restrictions).
- According to calculations taken by the Board Administrator from the previously submitted site plan (one that is according to the applicant identical to the one submitted with the current application), about 1,800 square feet (105' x 17') of the proposed approximately 17,000 square foot building footprint (105' x 165') of its 4th level is proposed to be located in the additional 20' urban form front yard setback.
- This re-filed application focuses on allowing approximately half of the height of the proposed structure's 4th level to be located in the site's urban form front yard setback required along the site's street frontage which in this case is Central Expressway. The proposed structure complies with all setbacks with one exception: the structure between 45' – 54' in height is proposed to be located 18' from the site's front property line (or as much as 17' into the total 35' urban form front yard setback).
- The proposed structure that is between 45' – 54' in height to be located in the additional required 20' front yard setback is only 9' beyond the height in which the urban form setback becomes a factor, and is adjacent to an unusually wide right-of-way - in this case, Central Expressway/service road right-of-way over 300' wide.
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the urban form front yard setback requested to construct and maintain an approximately 54' high, 4-level multifamily residential structure will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same MU-3 zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same MU-3 zoning classification.
- If the Board were to grant the urban form front yard variance request of 17', imposing a condition whereby the applicant must comply with the submitted site plan and elevation, the structure would be limited to what is shown on these submitted plans – a structure that complies with setbacks 45' in height and below, but where 9' of the structure above 45' in height would be allowed to be located 18' from the site's front property line (or 17' into the 35' urban form front yard setback).





1:1,200

AERIAL MAP

Case no: BDA112-095

Date: 9/27/2012



City of Dallas

APPLICATION/APEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 112-095

Data Relative to Subject Property:

Date: August 23, 2012

Location address: 10011 N. Central Expressway Zoning District: MU-3(SAH)

Lot No.: 31A Block No.: 7294 Acreage: .66 Census Tract: 131.014

Street Frontage (in Feet): 1 142' 2 _____ 3) _____ 4) _____ 5) _____

NEAS

To the Honorable Board of Adjustment:

Owner of Property/or Principal Park Fountains L. P.

Applicant: Ed Simons Telephone: 214-761-9197

Mailing Address 1414 Elm Suite 200 Zip Code: 752022971

Represented by: Masterplan Telephone: 214-761-9197

Mailing Address: 900 Jackson, Suite 640 Zip Code: 75202

Affirm that a request has been made for a Variance X, or Special Exception , of Front yard setback
VARIANCE OF 17 FEET

Application is now made to the Honorable Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described request for the following reason: This lot has little depth compared to other properties along Central Expressway. There is a 16 foot wide Oncor easement at the rear of the lot that makes it difficult to provide the additional setback. The additional setback doesn't provide a benefit to anyone since it is along the expressway service road.

Note to Applicant: If the relief requested in this application is granted by the Board of Adjustment, said permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

Respectfully submitted: Ed Simons
Applicant's name printed

Applicant's signature

Affidavit

Before me the undersigned on this day personally appeared Ed Simons who on (his/her/its) behalf certifies that the above statements are true and correct to his best knowledge and that he/she/it is principal/or authorized representative of the subject property.

Ed Simons
Affiant (Applicant's signature)

Subscribed and sworn to before me this 23 day of August, 2012



Carol Ann Laguer
Notary Public in and for Dallas County, Texas

MEMORANDUM OF
ACTION TAKEN BY THE
BOARD OF ADJUSTMENT

Date of Hearing _____

Appeal was--Granted OR Denied

Remarks _____

Chairman

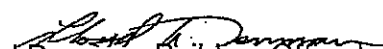
Building Official's Report

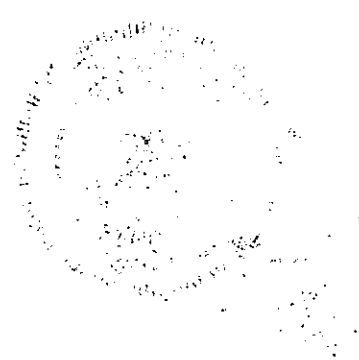
I hereby certify that ED SIMONS

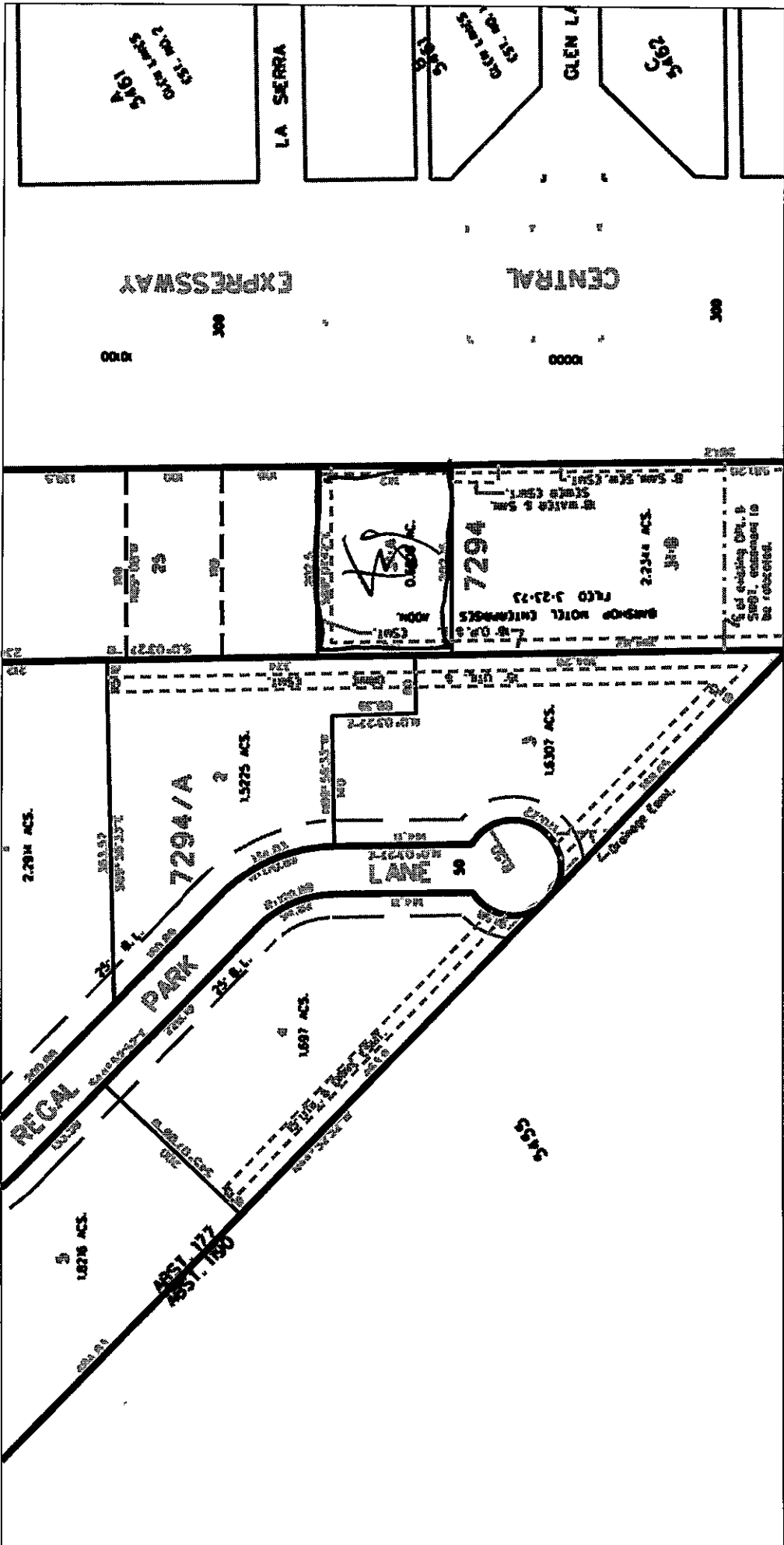
did submit a request for a variance to the front yard setback regulations
at 10011 N. Central Expy.

BDA112-095. Application of Ed Simons for a variance to the front yard setback regulation at 10011 N. Central Expressway. This property is more fully described as lot 31A in city block 7294 and is zoned MU-3(SAH), which requires a front yard setback of 35 feet for the portion of the structure over 45 feet in height due to the urban form setback. The applicant proposes to construct a multifamily residential structure and provide an 18 foot front yard setback, which will require a 17 foot variance to the front yard setback regulation.

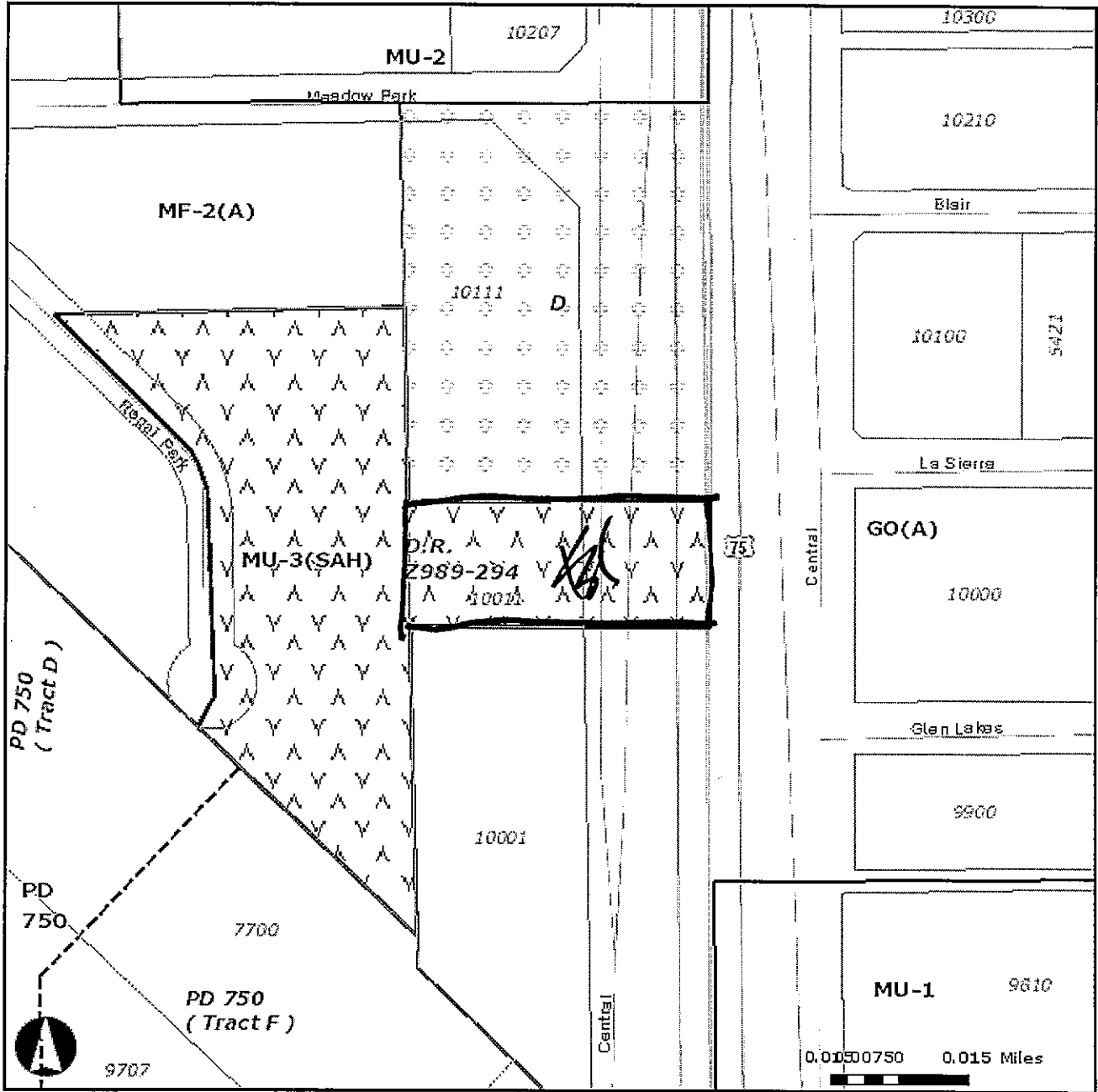
Sincerely,


Lloyd Denman, Building Official





City of Dallas Zoning

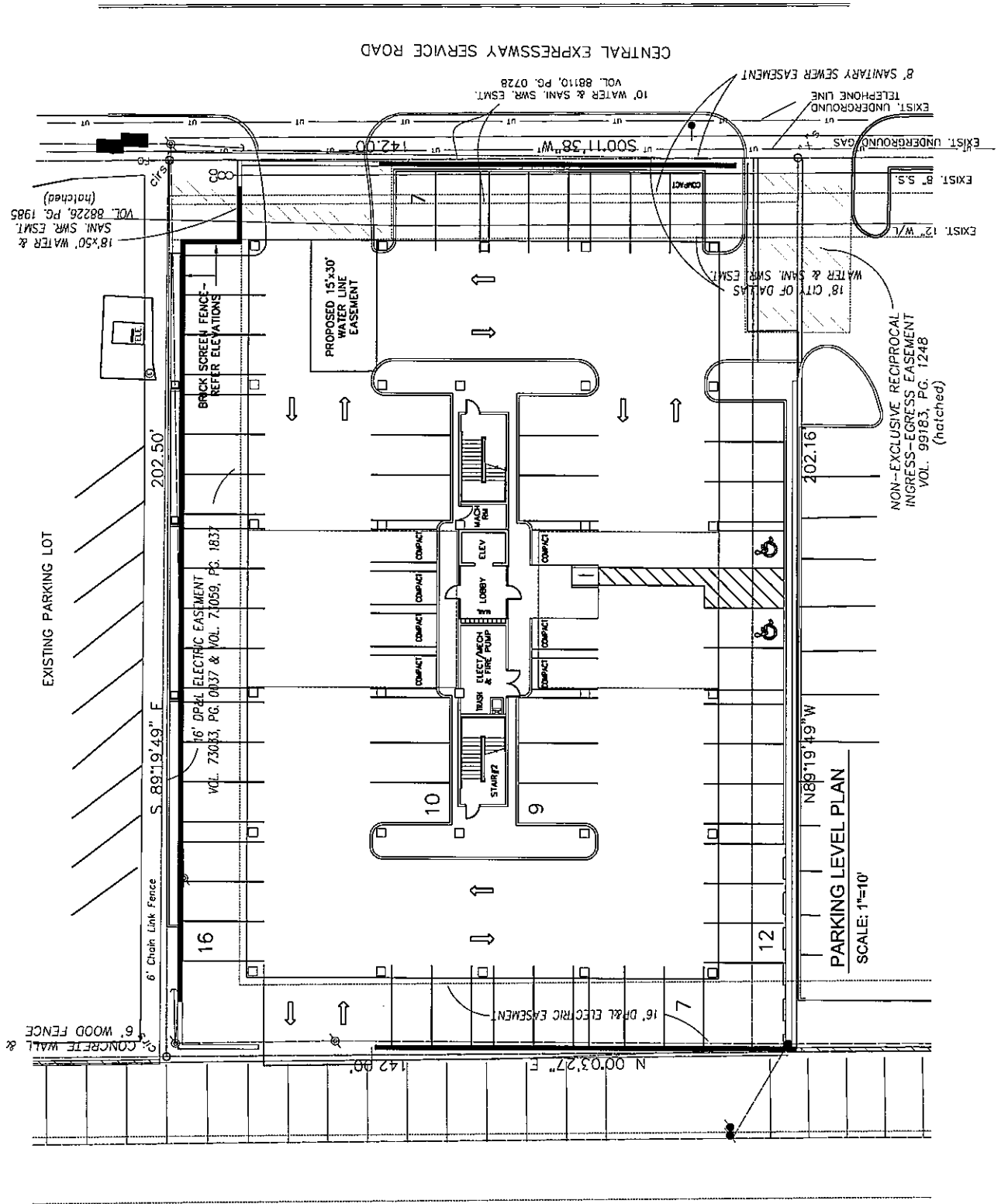


- City Boundaries
- County
- Certified Parcels
- DISD Sites
- Council Districts
- Waterways
- Parks

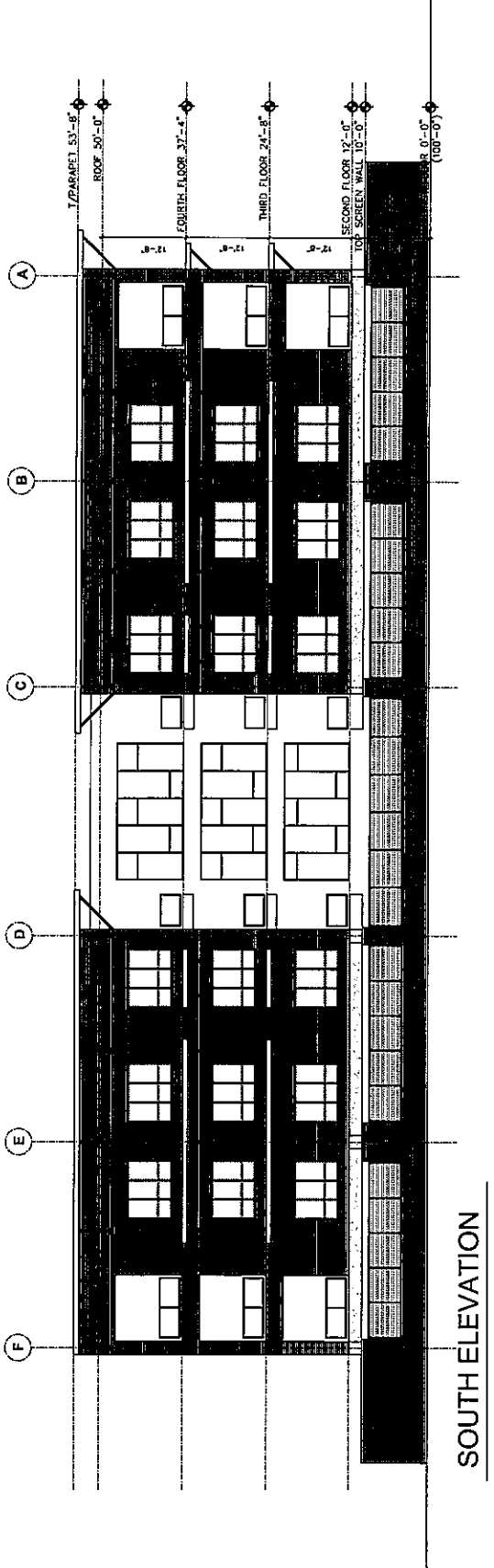
- Dry Overlay
-
-
- Historic Overlay
- Historic Subdistricts
- NSO Overlay
- NSO Subdistricts
- MD Overlay

- Base Zoning
- Floodplain
-
 100 Flood Zone
 -
 Mill's Creek
 -
 Peak's Branch
 -
 X PROTECTED BY LEVEE
 - Pedestrian Overlay
-
 CP
 -
 SP
 - Environmental Corridors

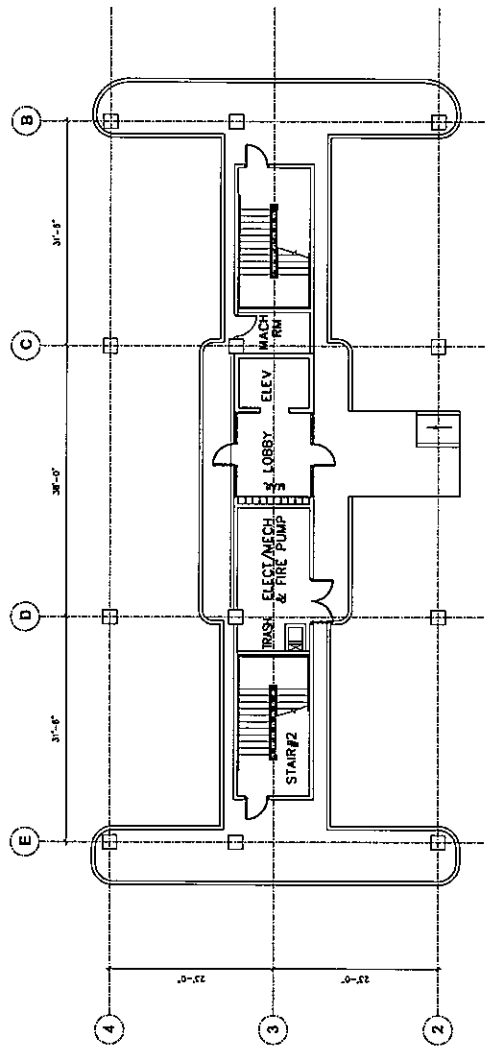
NORTH CENTRAL
 EXPRESSWAY (US 75)
 (300' PUBLIC R.O.W.)



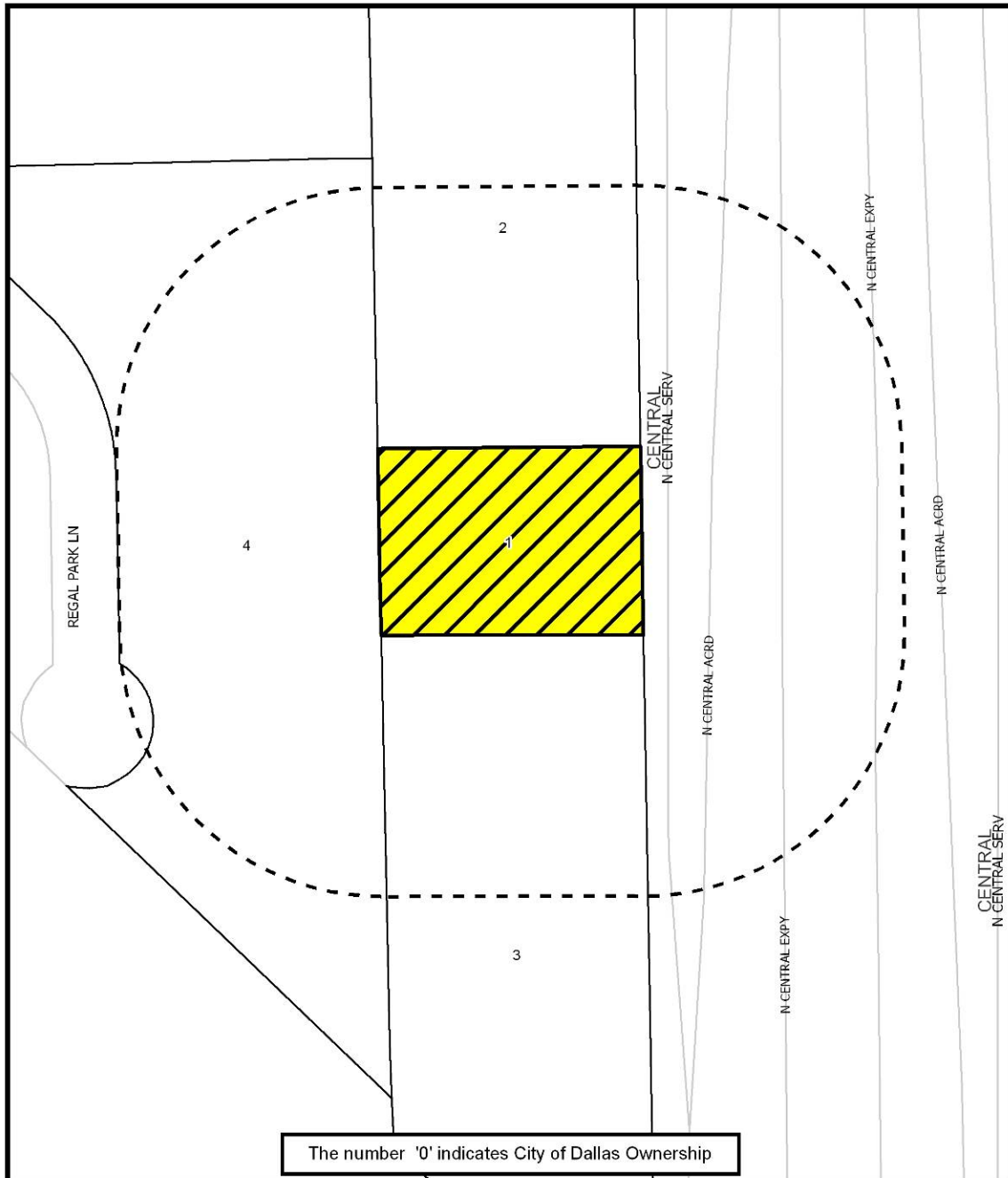
PARKING LEVEL PLAN
 SCALE: 1"=10'



SOUTH ELEVATION



PARKING LEVEL FLOOR PLAN



 1:1,200	NOTIFICATION		Case no: BDA112-095
	<div style="border: 1px solid black; padding: 2px; display: inline-block;">200'</div> AREA OF NOTIFICATION <div style="border: 1px solid black; padding: 2px; display: inline-block;">4</div> NUMBER OF PROPERTY OWNERS NOTIFIED	Date: 9/27/2012	

Notification List of Property Owners

BDA112-095

4 Property Owners Notified

<i>Label #</i>	<i>Address</i>	<i>Owner</i>
1	10011 CENTRAL EXPY	PARK FOUNTAINS LP
2	10111 CENTRAL EXPY	GAYLORD BROADCASTING COMPANY LP
3	10001 CENTRAL EXPY	BRE LQ TX PPTIES LP ATTN: PPTY TAX DEPT
4	10006 REGAL PARK LN	REGAL PARK FOUNTAINS

FILE NUMBER: BDA 112-104

BUILDING OFFICIAL'S REPORT:

Application of John Chong, represented by Tailim Song Law Firm, for variances to the front yard setback regulations at 1030 N. Zang Boulevard. This property is more fully described as Lot 1 in City Block A/3373 and is zoned CR, which requires a front yard setback of 15 feet. The applicant proposes to construct and maintain a structure and provide a 0 foot front yard setback, which will require a variance of 15 feet.

LOCATION: 1030 N. Zang Boulevard

APPLICANT: John Chong
Represented by Tailim Song Law Firm

REQUESTS:

Variances to the front yard setback regulations of up to 15' are requested in conjunction with constructing and maintaining an approximately 2,800 square foot convenience store, part of which would be located in the site's two 15' front yard setbacks on N. Zang Boulevard and N. Beckley Avenue. The site is currently developed with a vacant nonresidential structure that the applicant plans to demolish.

STANDARD FOR A VARIANCE:

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

- (A) not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;
- (B) necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
- (C) not granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

STAFF RECOMMENDATION:

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The subject site is unique and different from most lots zoned CR in that it is a triangular-shaped lot with a restrictive build area. The developable space on this property ranges from 0' at the narrowest to 38' in width at its widest when the two 15' front yard setbacks are accounted for on this site.

BACKGROUND INFORMATION:

Zoning:

Site: CR (Community Retail)
North: PD 468 (Planned Development District)
South: CR (Community retail)
East: CH (Cluster Housing)
West: LO-1 (Limited Office)

Land Use:

The subject site is developed with a vacant non-residential structure. The area to the north is developed mostly as retail uses; the area to the east is developed with residential uses; and the area to the south and west are developed with what appears to be office uses.

Zoning/BDA History:

There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

Timeline:

August 22, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

September 12, 2012: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

September 19, 2012: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the September 26th deadline to submit additional evidence for staff to factor into their analysis; and the October 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;

- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

September 26, 2012: The Sustainable Development and Construction Department Senior Historic District Planner commented that the structure on the site is not a City of Dallas landmark or in a District but is adjacent to the Lake Cliff Historic District. The planner comments that he knows the community was upset about the demolition and original plan for the site but it seems from the application that the building will be closer to the street, preserving more of the streetscape, so perhaps this is the compromise worked out.

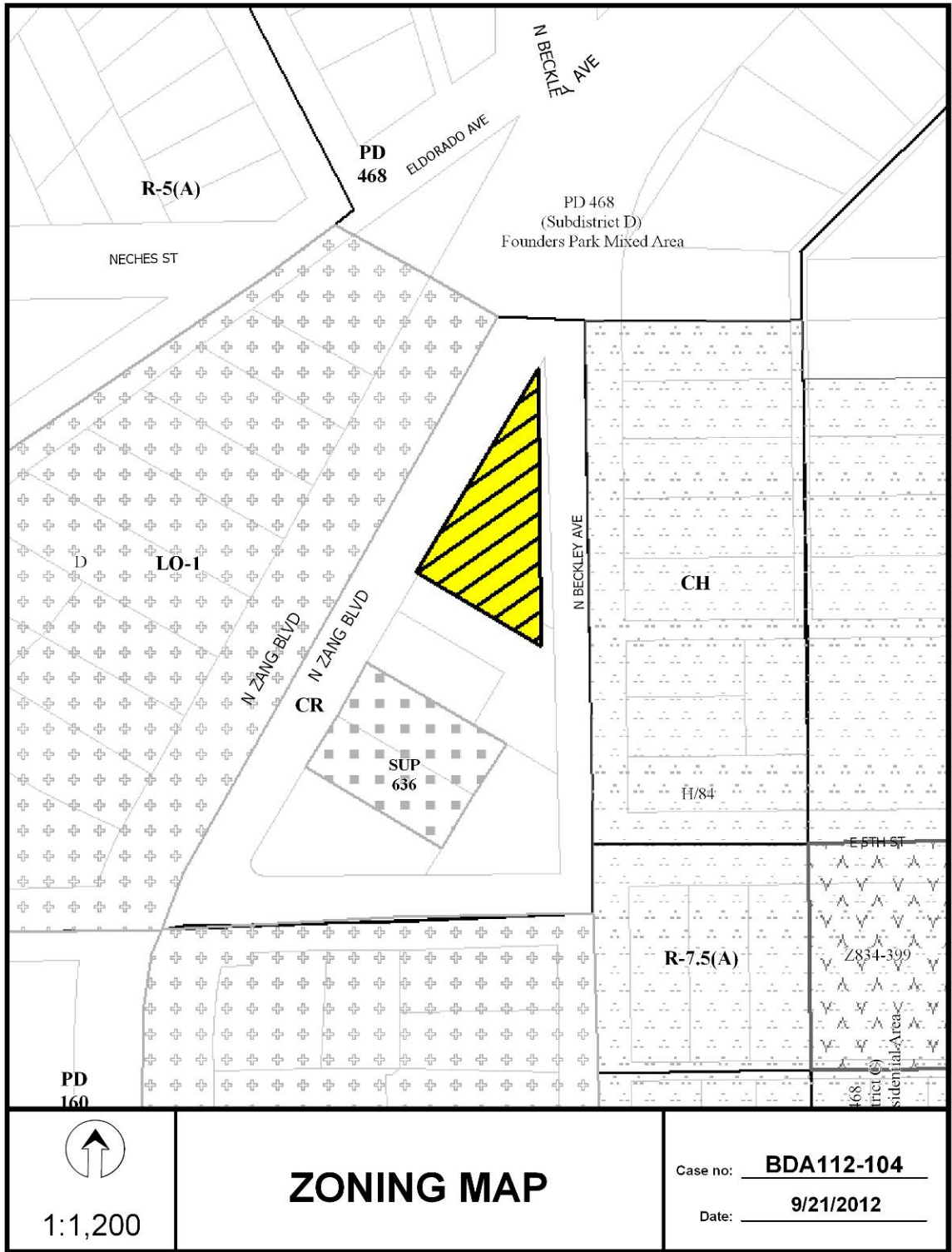
October 2, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Building Inspection Senior Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

No review comment sheets with comments were submitted in conjunction with this application.

GENERAL FACTS/STAFF ANALYSIS:

- These requests focus on constructing and maintaining an approximately 2,800 square foot convenience store, part of which would be located in the site's two required front yard setbacks on N. Zang Boulevard and N. Beckley Avenue on a site currently developed with a vacant nonresidential structure.
- The subject site is located at intersection of Zang Boulevard and N. Beckley Avenue. The property with two street frontages has two front yard setbacks as any corner property with two street frontages would that is not zoned agricultural, single family, or duplex.
- Development in CR zoning is required to provide a minimum 15' front yard setback. A site plan has been submitted that denotes an approximately 2,800 square foot structure that is located as close as on the site's two front property lines or as much as 15' into the 15' front yard setbacks.
- According to DCAD records, the "improvements" at 103 N. Zang Boulevard is a 1,345 square foot "converted service station" built in 1929.
- The subject site is triangular in shape and, according to the application, is 0.263 acres (or approximately 11,500 square feet) in area.
- The applicant has the burden of proof in establishing the following:

- That granting the variances to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
- The variances are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same CR zoning classification.
- The variances would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same CR zoning classification.
- If the Board were to grant the variance requests and impose the submitted site plan as a condition, the structure in the front yard setbacks would be limited to what is shown on this document.





1:1,200

AERIAL MAP

Case no: BDA112-104

Date: 9/21/2012



City of Dallas

APPLICATION/APPEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 112-104

Data Relative to Subject Property:

Date: 8/22/2012

Location address: 1030 N. Zang Blvd., Dallas 75208 Zoning District: CR

Lot No.: 1 Block No.: A/3373 Acreage: 0.263 Census Tract: 4201

Street Frontage (in Feet): 1) 193.71' 2) 226.99' 3) _____ 4) _____ 5) _____

To the Honorable Board of Adjustment :

Owner of Property/or Principal: John Chong

Applicant: John Chong Telephone: _____

Mailing Address: 927 Condor Dr., Coppell, Texas Zip Code: 75019

Represented by: Tailim Song Law Firm Telephone: 214-598-8400

Mailing Address: 13140 Coit Rd., Ste 350, Dallas, Texas Zip Code: 75240

Affirm that a request has been made for a Variance or Special Exception of Setbacks
along street frontages of N. Zang Blvd. & N. Berkeley Ave. Variance of 15ft setback

Application is now made to the Honorable Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described request for the following reason:

The lot is irregularly shaped making it impossible to build the structure desired by the community and planning department.

Note to Applicant: If the relief requested in this application is granted by the Board of Adjustment, said permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

Respectfully submitted: John Chong
Applicant's name printed

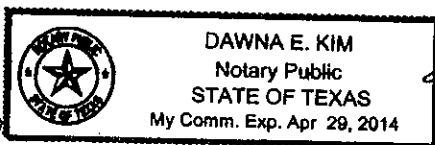
[Signature]
Applicant's signature

Affidavit

Before me the undersigned on this day personally appeared John Soo Chong who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

[Signature]
Affiant (Applicant's signature)

Subscribed and sworn to before me this 22nd day of August, 2012



[Signature]
Notary Public in and for Dallas County, Texas

MEMORANDUM OF
ACTION TAKEN BY THE
BOARD OF ADJUSTMENT

Date of Hearing _____

Appeal was---Granted OR Denied

Remarks _____

Chairman

Building Official's Report

I hereby certify that John Chong
represented by Tailim Song
did submit a request for a variance to the front yard setback regulations
at 1030 N. Zang Blvd.

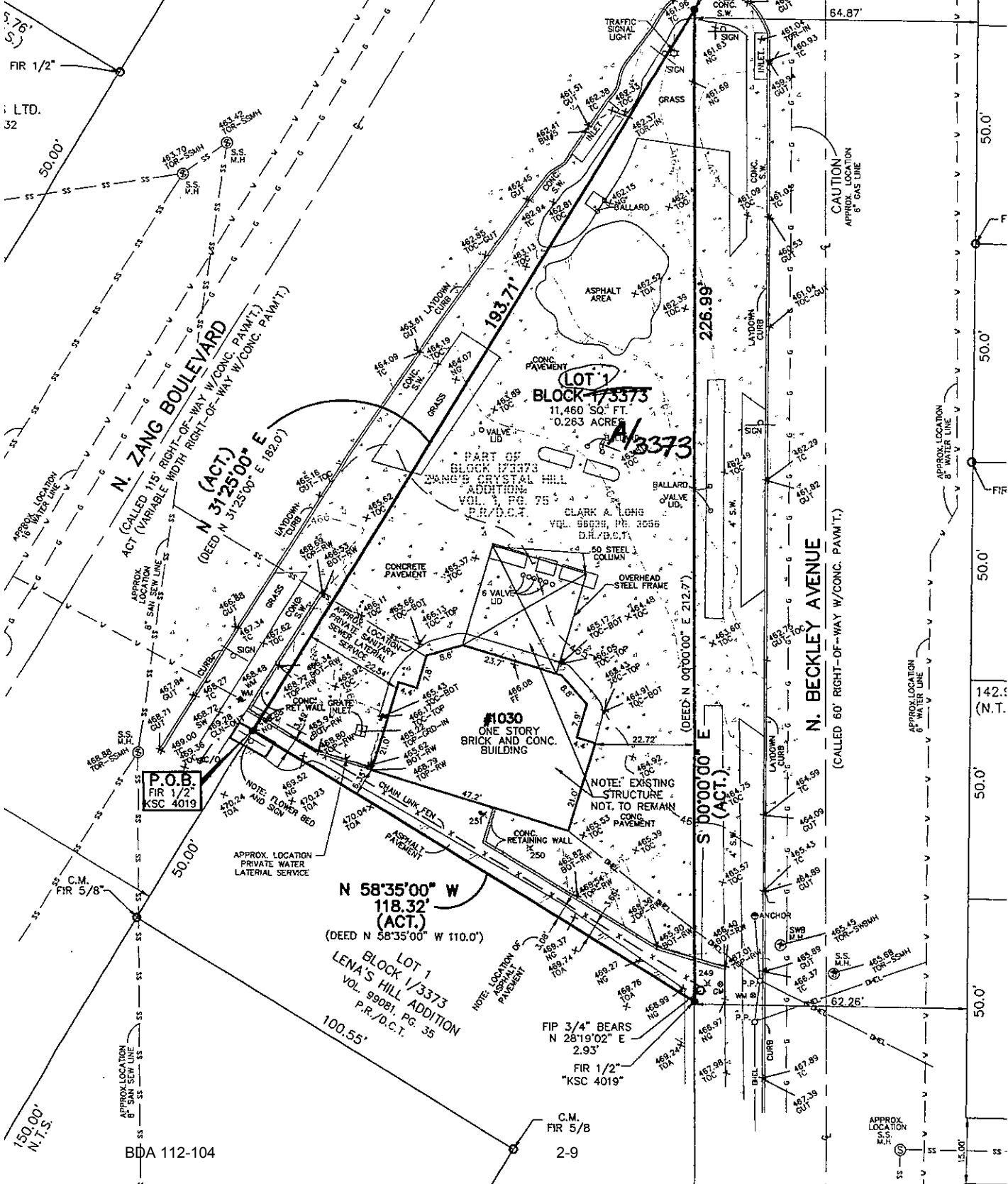
BDA112-104. Application of John Chong represented by Tailim Song for a variance to the front yard setback regulations at 1030 N. Zang Blvd. This property is more fully described as lot 1 in city block A/3373 and is zoned CR, which requires a front yard setback of 15 feet. The applicant proposes to construct a nonresidential structure and provide a 0 foot front yard setback, which will require a 15 foot variance to the front yard setback regulation.

Sincerely,

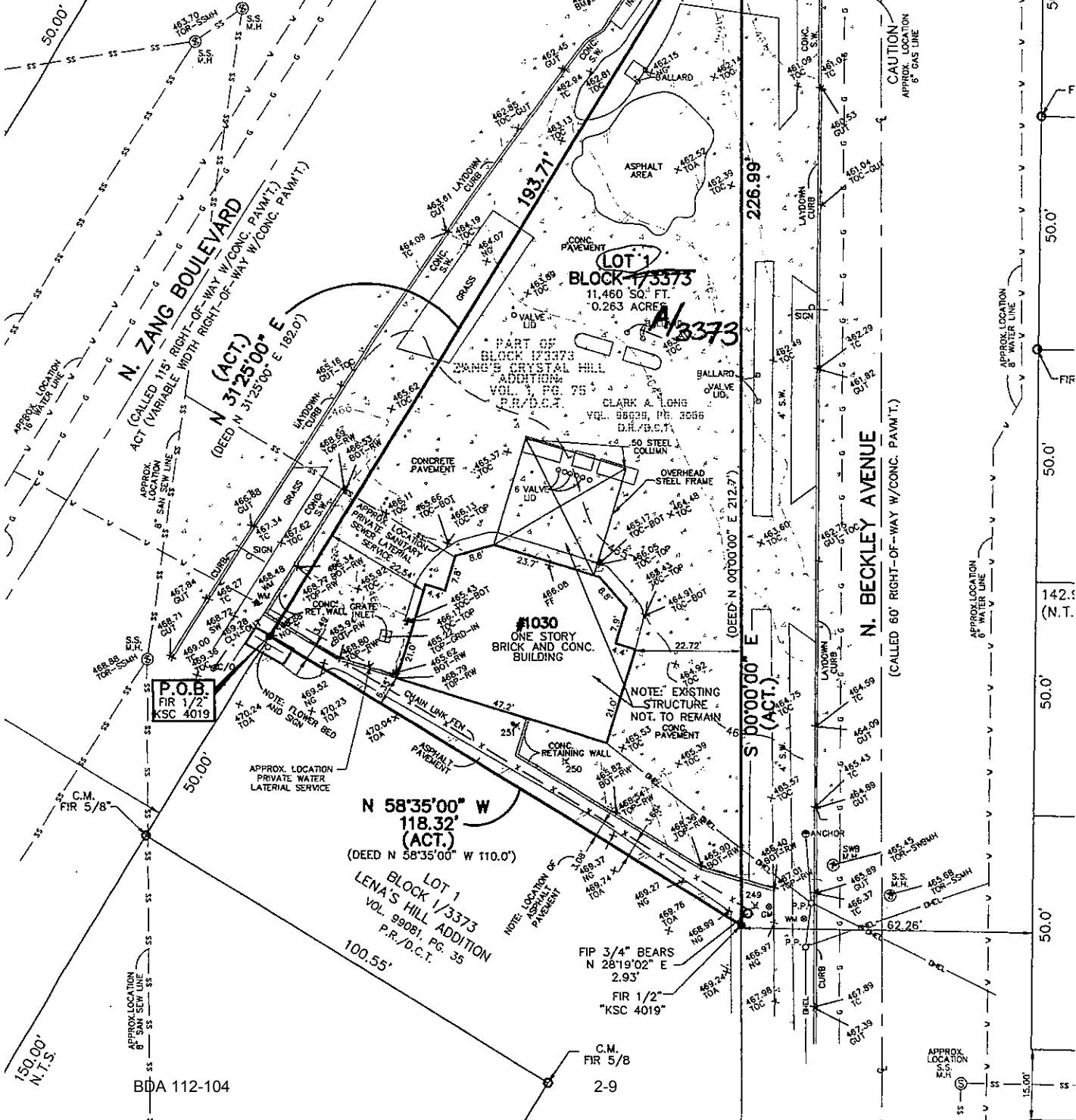

Lloyd Denman, Building Official

A PART OF
BLOCK J/3374

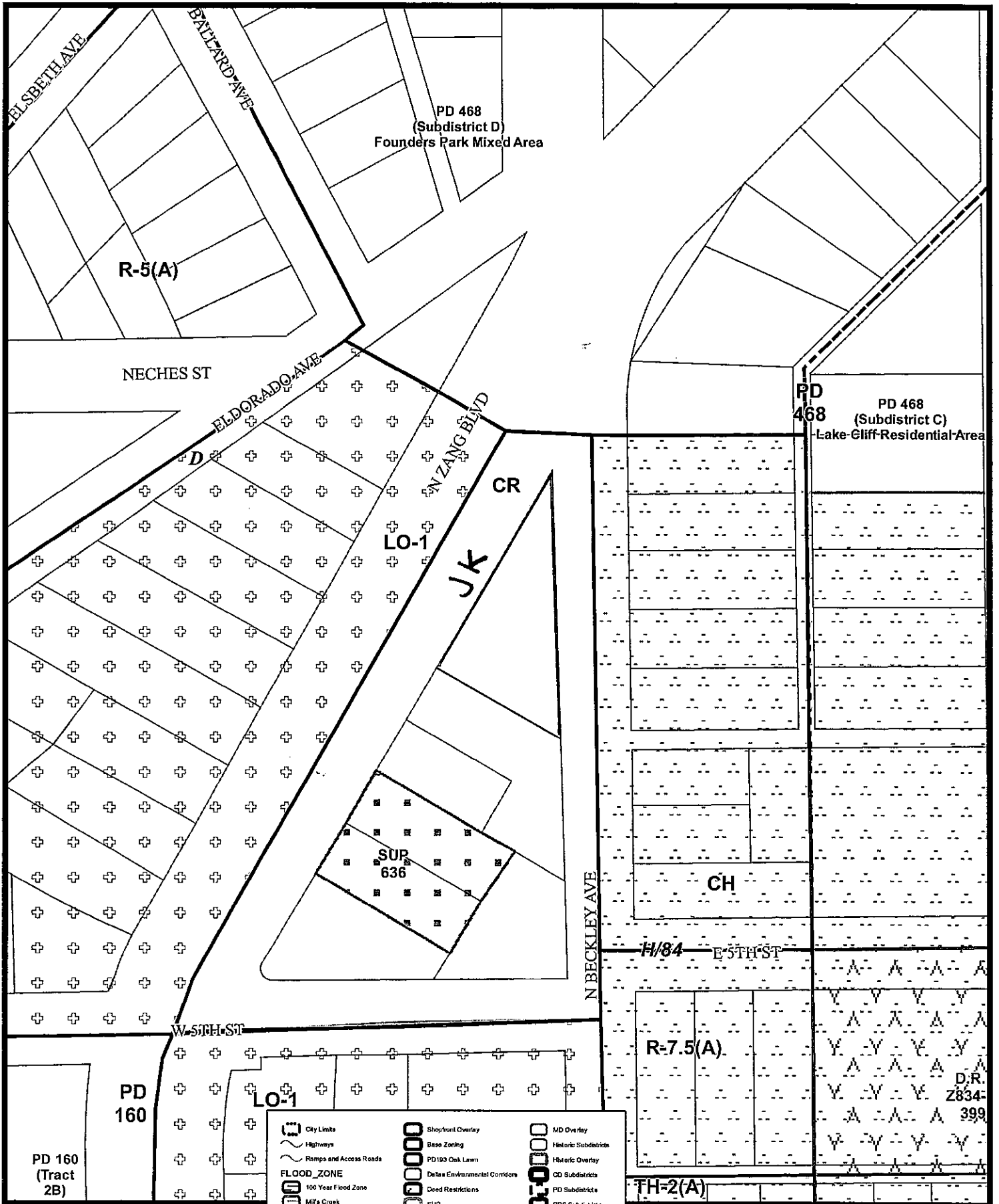
& MARY L. MALLEY
L. 94149, PG. 449
D.R./D.C.T.



LTD.
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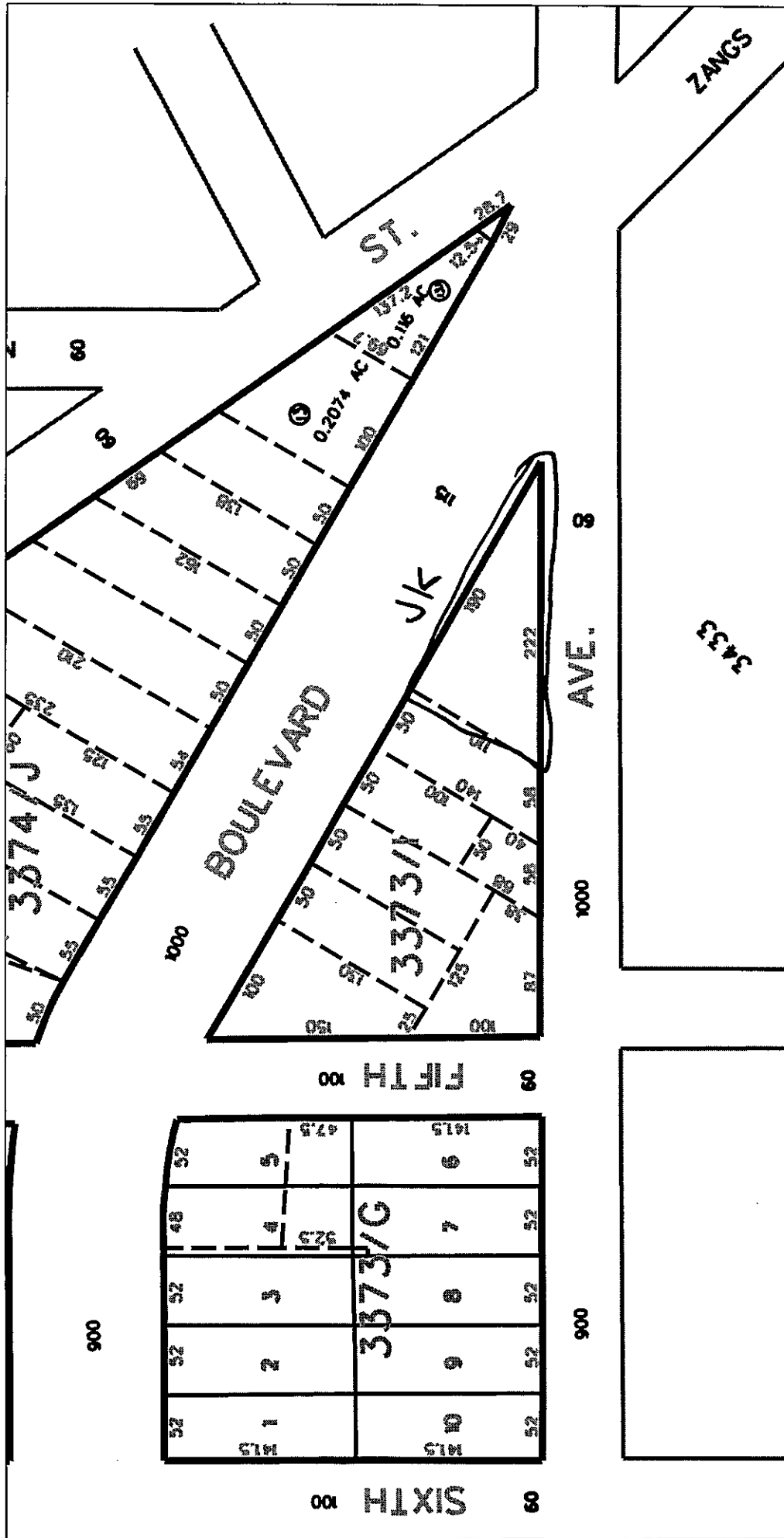
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	City Limits		Shopfront Overlay		MD Overlay
	Highways		Base Zoning		Historic Subdistricts
	Ramps and Access Roads		PD193 Oak Lawn		Historic Overlay
	FLOOD_ZONE		Delta Environmental Corridor		CD Subdistricts
	100 Year Flood Zone		Deed Restrictions		PD Subdistricts
	Mill's Creek		SUP		PDS Subdistricts
	Peak's Branch		D		NSD Subdistricts
	X PROTECTED BY LEVEE		D-1		NSD_Overlay
	Parks		CP		Excerptment Overlay
	Height Map Overlay		SP		
	Parking Management Overlay				

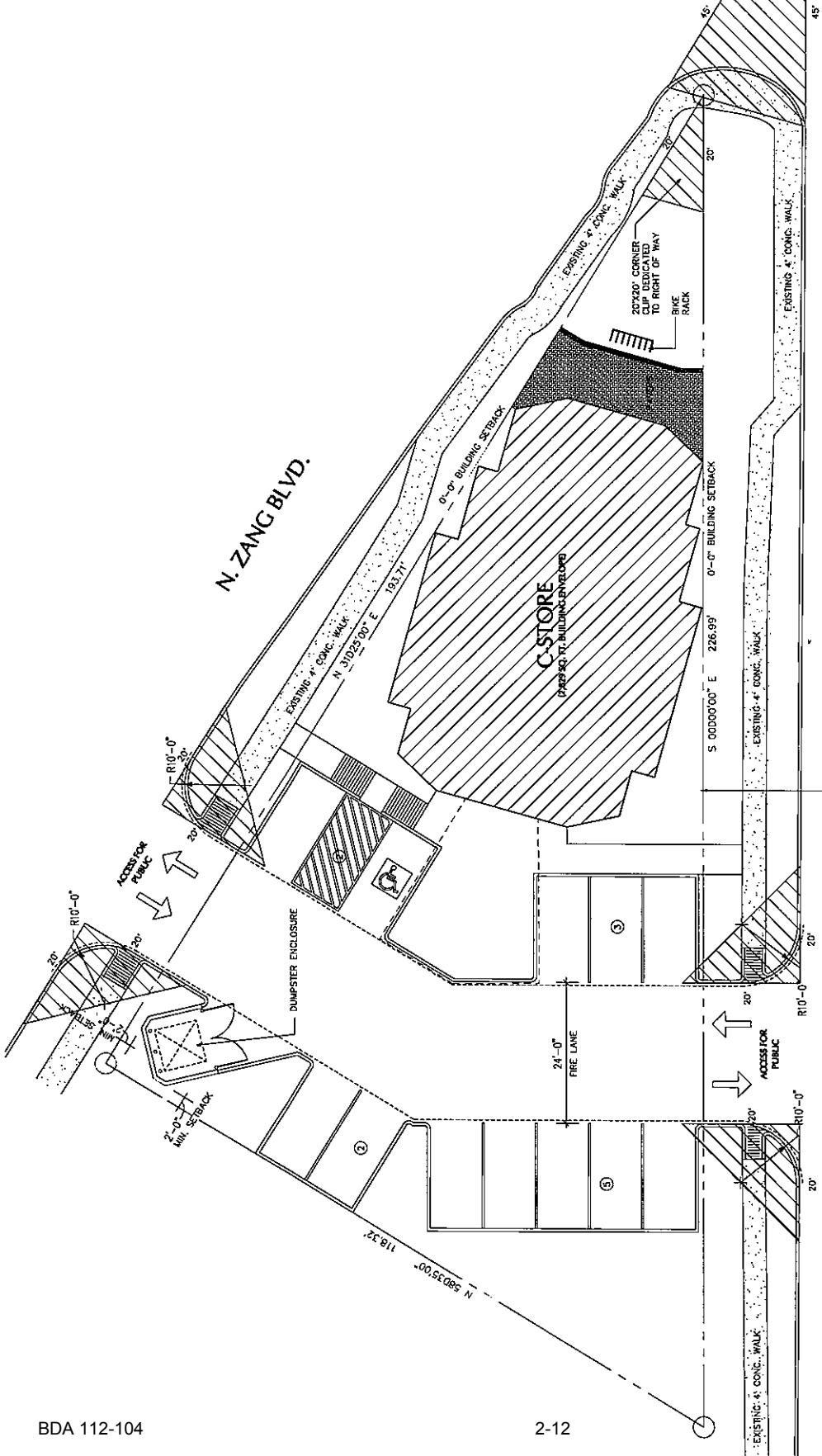
Case ID:
Printed: 8/22/2012

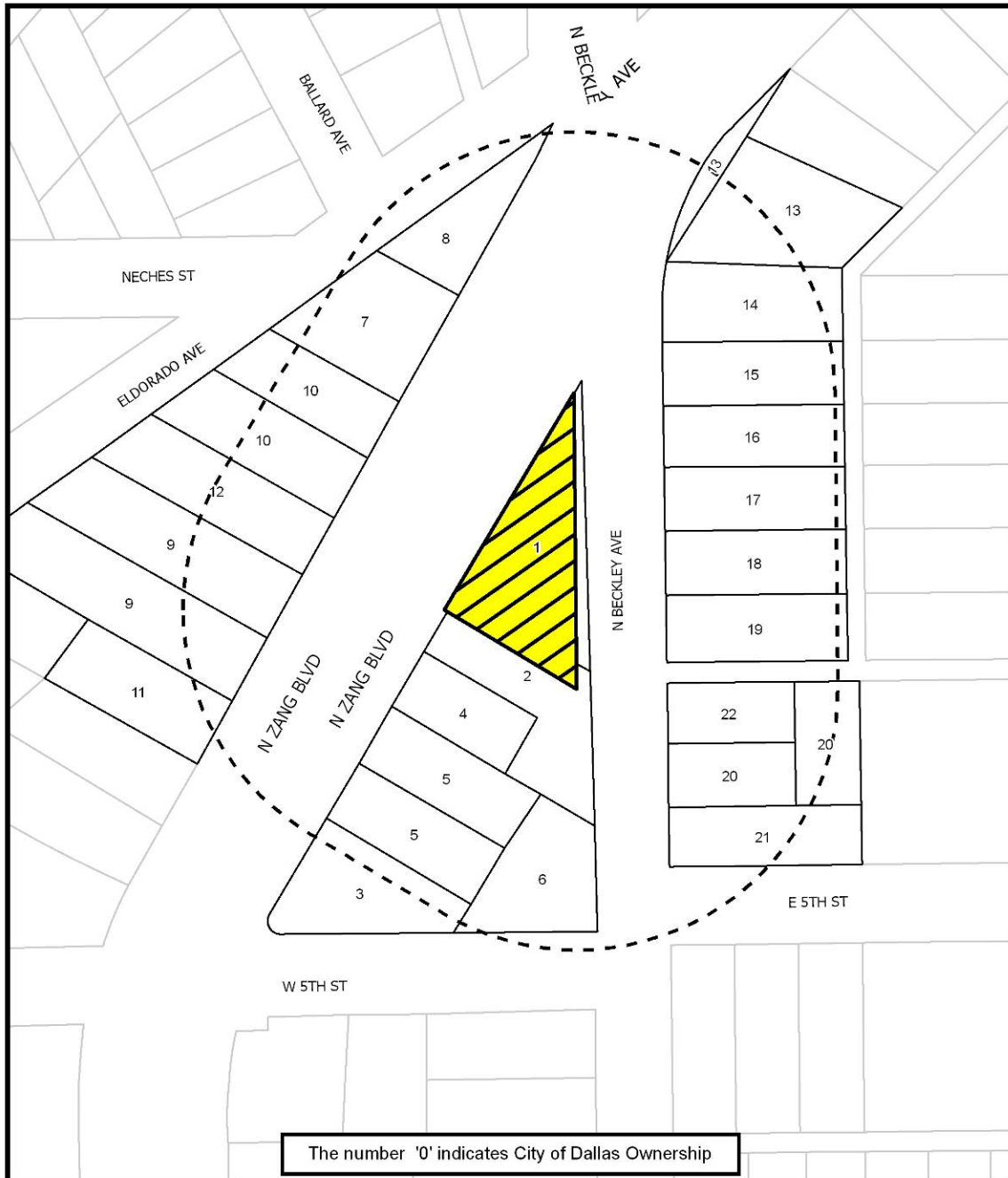


DRAWN BY: E.M.
 CHECKED BY: M.B.
 DATE: 08/18/17
 DESIGNED FOR PERMIT:
 SCALE FOR PERMIT:
 SCALE FOR CONSTRUCTION:
 REVISIONS:
 1. 08/18/17: PERMIT PREPARED BY THE ARCHITECT. ALL DIMENSIONS AND NOTES SHALL BE IN ACCORDANCE WITH THE CITY OF DALLAS, TEXAS, PERMITTING REGULATIONS.

PROPOSED RETAIL
 1030 N. ZANG BLVD.
 DALLAS, TX 75208
 R R G
 DESIGN GROUP, INC.
 ARCHITECTS

SHEET DESCRIPTION:
 SITE PLAN
 SHEET NO. A-1.02





 1:1,200	NOTIFICATION		Case no: BDA112-104
	<div style="border: 1px solid black; padding: 2px; display: inline-block;">200'</div> AREA OF NOTIFICATION <div style="border: 1px solid black; padding: 2px; display: inline-block;">22</div> NUMBER OF PROPERTY OWNERS NOTIFIED	Date: 9/21/2012	

Notification List of Property Owners

BDA112-104

22 Property Owners Notified

<i>Label #</i>	<i>Address</i>	<i>Owner</i>
1	1030 ZANG BLVD	LONG CLARK A
2	1026 ZANG BLVD	MILLER DONALD W. & DONNA
3	1006 ZANG BLVD	GARCIA MAGDALENA & GONSALO O AVELAR
4	1018 ZANG BLVD	KAEMERLE HAROLD JR &
5	1010 ZANG BLVD	KAEMERLE HAROLD JR ET AL SUITE 610
6	1003 BECKLEY AVE	KAEMERLE HAROLD JR & C A E C TRUST & JOS
7	1039 ZANG BLVD	MALLEY JOSEPH H & MARY L
8	1045 ZANG BLVD	MALLEY JOSEPH H & MARY LORETTA
9	1019 ZANG BLVD	DALAL KARIM & RAYAN DALAL
10	1033 ZANG BLVD	PHILLIPS PROPERTIES LTD
11	1015 ZANG BLVD	AVERITE CHRISTOPHER J
12	1029 ZANG BLVD	A C PHILLIPS FAMILY PPTIES, LTD
13	1104 ZANG BLVD	BARCENAS ISABEL AGUILAR
14	1032 BECKLEY AVE	YOUNG HARVEY M
15	1028 BECKLEY AVE	WHATLEY KATRINA L & JEFFREY A
16	1026 BECKLEY AVE	HALL PATRICIA A
17	1022 BECKLEY AVE	SCHULTZ MEREDITH
18	1018 BECKLEY AVE	GRANADO RALPH & DEBRA
19	1014 BECKLEY AVE	GONZALEZ MARIA & JACOBO SOTO
20	1006 BECKLEY AVE	COFER WILLIE R
21	1002 BECKLEY AVE	MCELROY JOSEPH
22	1010 BECKLEY AVE	SPERLING MERCEDES & RICHARD ALLEN

FILE NUMBER: BDA 112-094

BUILDING OFFICIAL'S REPORT:

Application of John Pozadzides, represented by Keith Redmon, for variances to the side yard setback and off-street parking regulations at 6506 Crestmere Drive. This property is more fully described as Lot 9 in City Block 4/8181 and is zoned R-16(A), which requires (1) a 10 foot side yard setback and (2) that a parking space be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley. The applicant proposes to construct and maintain a structure and provide a 4 foot side yard setback, which will require a variance to the side yard setback regulations of 6 feet. The applicant also proposes to provide enclosed parking spaces with a setback of 13 feet 11 inches, which will require a variance to the off-street parking regulations of 6 feet 1 inch.

LOCATION: 6506 Crestmere Drive

APPLICANT: John Pozadzides
Represented by Keith Redmon

REQUESTS:

The following appeals have been made on a site that is currently developed with a single family home:

1. a variance to the side yard setback regulations of 6' is requested in conjunction with constructing and maintaining a garage addition, part of which is located in the site's southern 10' side yard setback;
2. a variance to the off-street parking regulations of 6' 1" is requested in conjunction with modifying the existing enclosed garage and enclosing the parking spaces in the modified enclosed garage. Its expansion would be located less than the required 20' distance from the alley right-of-way line.

STANDARD FOR A VARIANCE:

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

- (A) not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;
- (B) necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be

developed in a manner commensurate with the development upon other parcels of land with the same zoning; and

- (C) not granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

STAFF RECOMMENDATION (front yard variance):

Denial

Rationale:

- Although the subject site is unique and different from most lots zoned R-16(A) in that it is slightly irregular in shape and is a corner lot with two front yard setbacks, the applicant has not substantiated how these features of the approximately 20,000 square foot site preclude the applicant from developing it in a manner commensurate with development on other similarly zoned R-16(A) properties. The site is currently developed with a single-family home approximately 3,700 square feet with an attached two-vehicle garage that complies with setbacks.
- The applicant has not provided information to show that the proposed addition/expansion of the existing home is necessary to develop the approximately 20,000 square foot lot with development that is commensurate with development on other lots zoned R-16(A) – that being what appears to be a home with 3,700 feet of area with a four-vehicle garage that would not comply with side yard setbacks.

STAFF RECOMMENDATION (parking variance):

Denial

Rationale:

- Although the subject site is unique and different from most lots zoned R-16(A) in that it is slightly irregular in shape and is a corner lot with two front yard setbacks, the applicant has not substantiated how these features of the approximately 20,000 square foot site preclude the applicant from developing it in a manner commensurate with development on other similarly zoned R-16(A) properties. The site is currently developed with what appears to be a home with 3,700 square feet with an attached two-vehicle garage that complies with setbacks. The applicant has not provided information to show that the proposed addition/expansion of the existing home is necessary to develop the approximately 20,000 square foot lot with development that is commensurate with development on other lots zoned R-16(A) – that being what appears to be a home with 3,700 feet of area with a four-vehicle garage that would not comply with off-street parking regulations.
- In addition the applicant has not substantiated how granting this variance would not be contrary to the public interest. The Sustainable Development and Construction Department Engineering Division Assistant Director recommends denial of this request commenting that the “alley would be vulnerable to obstruction.” The site is located at the entrance of an alley that appears to be an access way of several

homes with frontages on Crestmere Drive and Meadowcreek Drive that use the alley way to access their garages off this alley where the enclosed parking spaces on the subject site (if variance were to be granted) would be as close as approximately 15' from the alley pavement line.

BACKGROUND INFORMATION:

Zoning:

Site: R-16(A) (Single family district 16,000 square feet)
North: R-16(A) (Single family district 16,000 square feet)
South: R-16(A) (Single family district 16,000 square feet)
East: R-16(A) (Single family district 16,000 square feet)
West: R-16(A) (Single family district 16,000 square feet)

Land Use:

The subject site is developed with a single family home. The areas to the north, east, south, and west are developed with single family uses.

Zoning/BDA History:

There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

Timeline:

July 27, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

September 12, 2012: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

September 19, 2012: The Board Administrator emailed the applicant's representative the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the September 26th deadline to submit additional evidence for staff to factor into their analysis; and the October 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

October 2, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Building Inspection Senior Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

October 5, 2012: The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked "Recommends that this be denied" commenting "Alley would be vulnerable to obstruction."

GENERAL FACTS/STAFF ANALYSIS (side yard variance):

- This request focuses on constructing and maintaining a garage addition (approximately 500 square feet in area), part of which is proposed to be located in the site's southern 10' side yard setback.
- The subject site is a corner lot with two street frontages of unequal distance. The subject site has two required front yards. The Crestmere Drive frontage is a required front yard because it is the shorter of the two frontages, which is always deemed the front yard on a corner lot of unequal frontage distance in a single family zoning district. The Meadowcreek Drive frontage is a required front yard because the continuity of the established front yard setbacks along this street created by lots to the south fronting this street must be maintained – a front yard that carries across the Meadowcreek Drive side of the site to where it meets Crestmere Drive. Thus, the site has two required front yards two side yards, and no rear yard.
- A site plan has been submitted denoting a portion of the proposed garage addition to be located as close as 4' from the site's southern side property line (or as much as 6' into the 10' side yard setback).
- It appears from the submitted site plan that approximately 1/10 (approximately 50 square feet) of the proposed approximately 500 square foot addition is to be located in the site's southern 10' side yard setback.
- DCAD records indicate that the property at 6506 Crestmere Drive has the following improvements:
 - "main improvement:" a structure built in 1968 with 3,726 square feet of living area, and 3,726 square feet of total area; and
 - "additional improvement:" a 550 square foot attached garage, and pool.
- The subject site is slightly irregular in shape (approximately 120' on the north; approximately 140' on the south; approximately 95' on the east; and approximately 164' on the west) and according to the application, is 0.46 acres (or approximately 20,000 square feet) in area. The site is zoned R-16(A) where lots are typically

16,000 square feet in area. The site is unique from most lots zoned R-16(A) in that it has two required front yards.

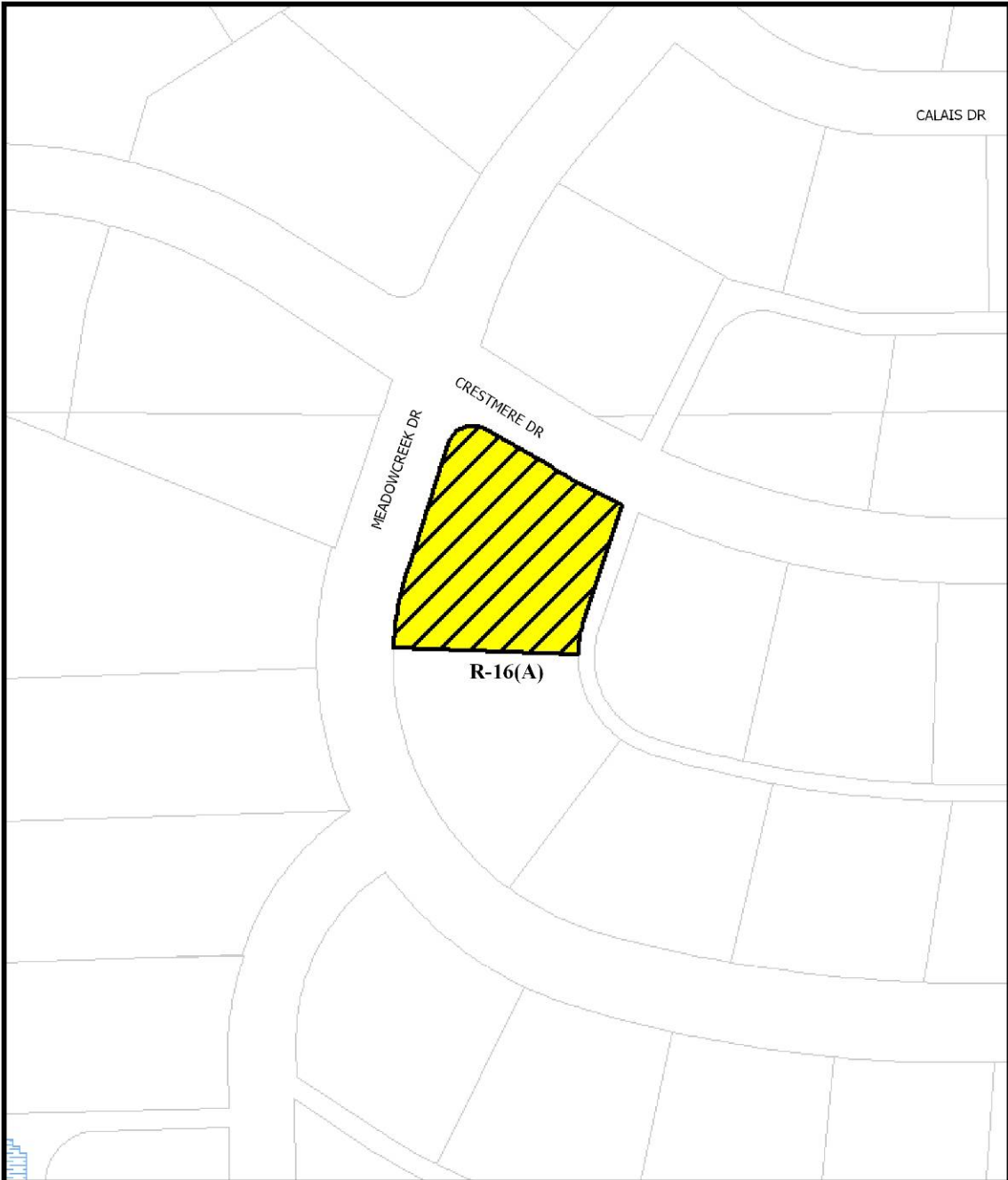
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the side yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-16(A) zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-16(A) zoning classification.
- If the Board were to grant the variance requests and impose the submitted site plan as a condition, the structure in the side yard setback would be limited to what is shown on this document– which in this case is a structure to be located as close as 4’ from the site’s southern side property line (or as much as 6” into this 10’ side yard setback).

GENERAL FACTS/STAFF ANALYSIS (parking variance):

- This request focuses on enclosing parking spaces with garage doors in the proposed garage addition to an existing garage with doors that currently face south to a motor court to what is proposed to face east towards the alley where the parking spaces in the expanded existing garage would be located less than the required 20’ distance from the alley right-of-way line.
- The Dallas Development Code states that a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in enclosed structure and if the space faces upon or can be entered directly from a street or alley.
- The submitted site plan denotes what appears to be the location of enclosed parking spaces in the proposed addition and modified garage structure ranging from approximately 14’ – 17’ from the side property/alley right-of-way line or approximately 15’ – 18’ from the projected pavement line.
- DCAD records indicate that the property at 6506 Crestmere Drive has the following improvements:
 - “main improvement:” a structure built in 1968 with 3,726 square feet of living area, and 3,726 square feet of total area; and
 - “additional improvement:” a 550square foot attached garage, and pool.
- The subject site is slightly irregular in shape (approximately 120’ on the north; approximately 140’ on the south; approximately 95’ on the east; and approximately 164’ on the west) and according to the application, is 0.46 acres (or approximately 20,000 square feet) in area. The site is zoned R-16(A) where lots are typically

16,000 square feet in area. The site is unique from most lots zoned R-16(A) in that it has two required front yards.

- The Sustainable Development and Construction Department Engineering Division Assistant Director submitted a review comment sheet marked “Recommends that this be denied” commenting “Alley would be vulnerable to obstruction.”
- The applicant has the burden of proof in establishing the following:
 - That granting the variance to the parking regulations of 6’ 1” will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance to the parking regulations of 6’ 1” is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-16(A) zoning classification.
 - The variance to the parking regulations of 6’ 1” requested would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same R-16(A) zoning classification.
- If the Board were to grant the variance request of 6’ 1”, staff recommends imposing the following conditions:
 1. Compliance with the submitted site plan is required.
 2. Automatic garage doors must be installed and maintained in working order at all times.
 3. At no time may the areas in front of the garage be utilized for parking of vehicles.
 4. All applicable permits must be obtained.(These conditions are imposed to help assure that the variance will not be contrary to public interest).

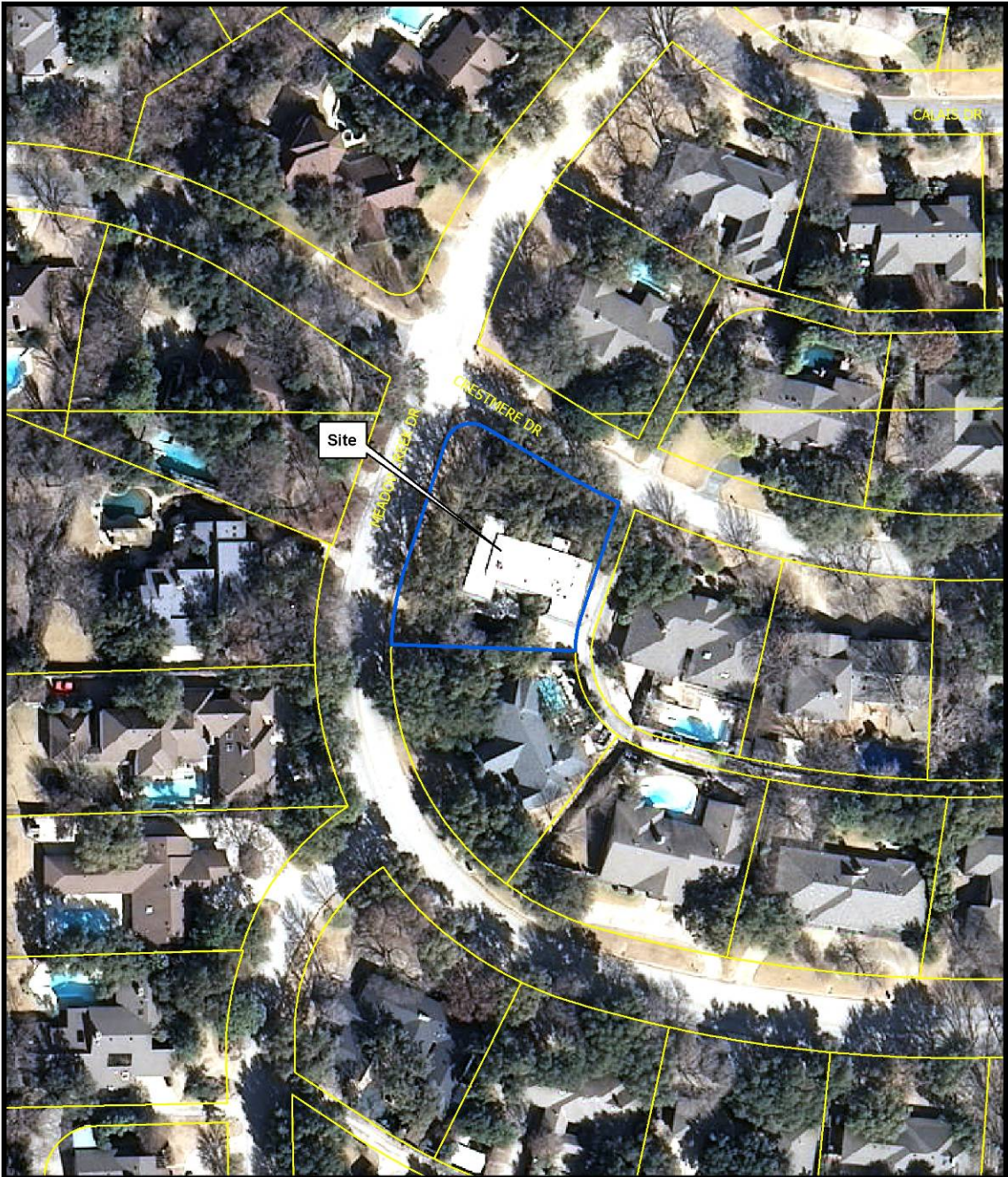


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ZONING MAP

Case no: BDA112-094

Date: 9/20/2012



1:1,200

AERIAL MAP

Case no: BDA112-094

Date: 9/21/2012



City of Dallas

APPLICATION/APEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 112-094

Data Relative to Subject Property:

Date: 7-27-12

Location address: 6506 Crestmere Dr.

Zoning District: R-16(A)

Lot No.: 9 Block No.: 4/8181 Acreage: .44

Census Tract: 136.08

Street Frontage (in Feet): 1) 165 2) 117 3) _____ 4) _____ 5) _____

NE 3N

To the Honorable Board of Adjustment :

Owner of Property/or Principal: John Pozadzides, Nika Kim, Holly Pozadzides

Applicant: JOHN POZADZIDES

Telephone: 972 213 5534

Mailing Address: 6504 Crestmere Dr., Dallas Zip Code: 75254

Represented by: Keith Redmon

Telephone: 214 876 1941

Mailing Address: 16124 Lonquist Dr. Dallas

Zip Code: 75248

Affirm that a request has been made for a Variance, or Special Exception of 1) 6' variance of side yard requirement, 2) 6' 1" variance of off street parking required.

Application is now made to the Honorable Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described request for the following reason:

1) irregular shaped lot 2) (2) platting front yard building line in excess of normal 25' requirement. Our lot has 40' & 30' building lines.

Note to Applicant: If the relief requested in this application is granted by the Board of Adjustment, said permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

Respectfully submitted: JOHN POZADZIDES
Applicant's name printed

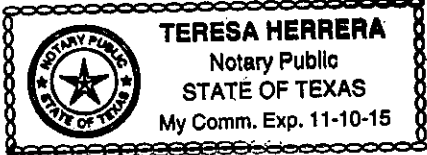
[Signature]
Applicant's signature

Affidavit

Before me the undersigned on this day personally appeared John Pozadzides who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

[Signature]
Affiant (Applicant's signature)

Subscribed and sworn to before me this 27th day of July, 2012



[Signature]
Notary Public in and for Dallas County, Texas

MEMORANDUM OF
ACTION TAKEN BY THE
BOARD OF ADJUSTMENT

Date of Hearing _____

Appeal was--Granted OR Denied

Remarks _____

Chairman

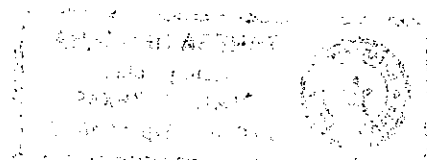
Building Official's Report

I hereby certify that John Pozadzides
represented by Keith Redmon
did submit a request for a variance to the side yard setback regulations, and for a variance to the
off-street parking regulation
at 6506 Crestmere Drive

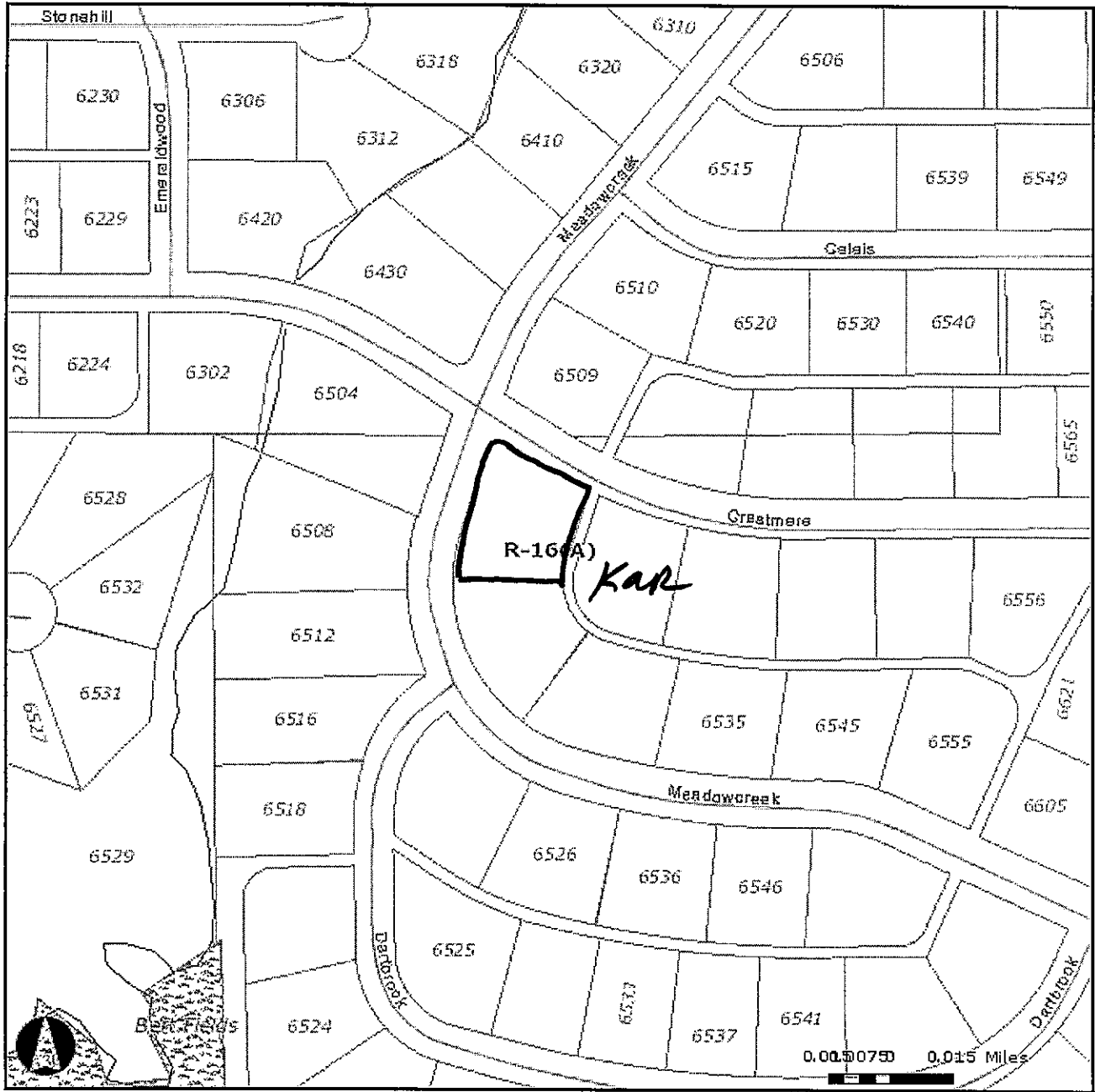
BDA112-094. Application of John Pozadzides represented by Keith Redmon for a variance to the side yard setback regulation and a variance to the off-street parking regulation at 6506 Crestmere Drive. This property is more fully described as lot 9 in city block 4/8181 and is zoned R-16(A); which requires a 10 foot side yard setback and requires a parking space must be at least 20 feet from the right-of-way line adjacent to a street or alley if the space is located in an enclosed structure and if the space faces upon or can be entered directly from the street or alley. The applicant proposes to construct a single family residential structure and provide a 4 foot side yard setback, which will require a 6 foot variance to the side yard setback regulation, and to construct single family residential structure with a rear yard setback of 13 feet 11 inches, which will require a variance of 6 feet 1 inch to the off-street parking regulation.

Sincerely,


Lloyd Denman, Building Official



City of Dallas Zoning



City Boundaries

- City Boundaries
- County
- Certified Parcels
- DISD Sites
- Council Districts
- Waterways
- Parks

Dry Overlay

- Dry Overlay
- D
- D-1
- Historic Overlay
- Historic Subdistricts
- NSO Overlay
- NSO Subdistricts
- MD Overlay

Base Zoning

- Base Zoning
- Floodplain
- 100 Flood Zone
- Mill's Creek
- Peak's Branch
- X PROTECTED BY LEVEE
- Pedestrian Overlay
- CP
- SP
- Environmental Corridors





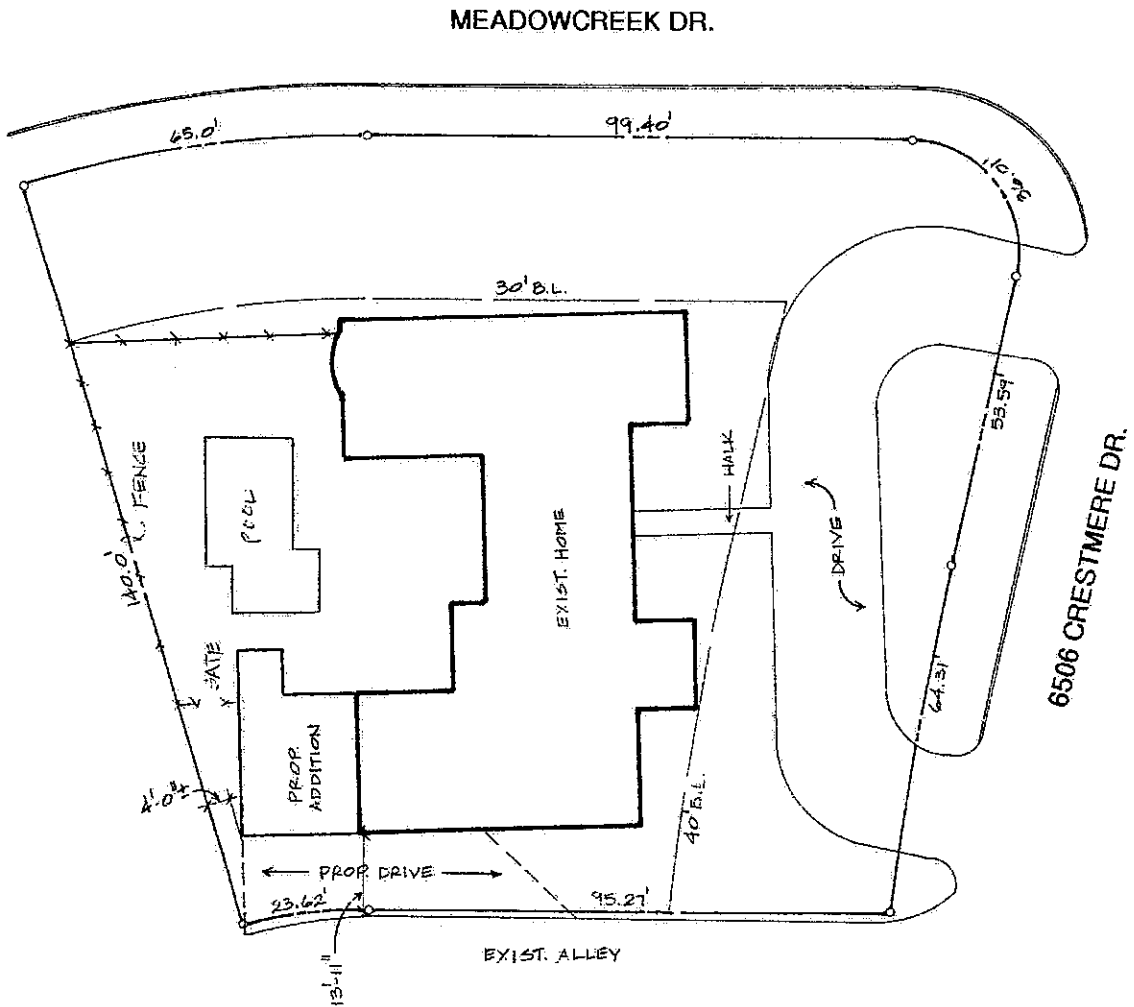
PLOT PLAN

LOT 9 - BLK 4/8181

NORTHWOOD HILLS ESTATES

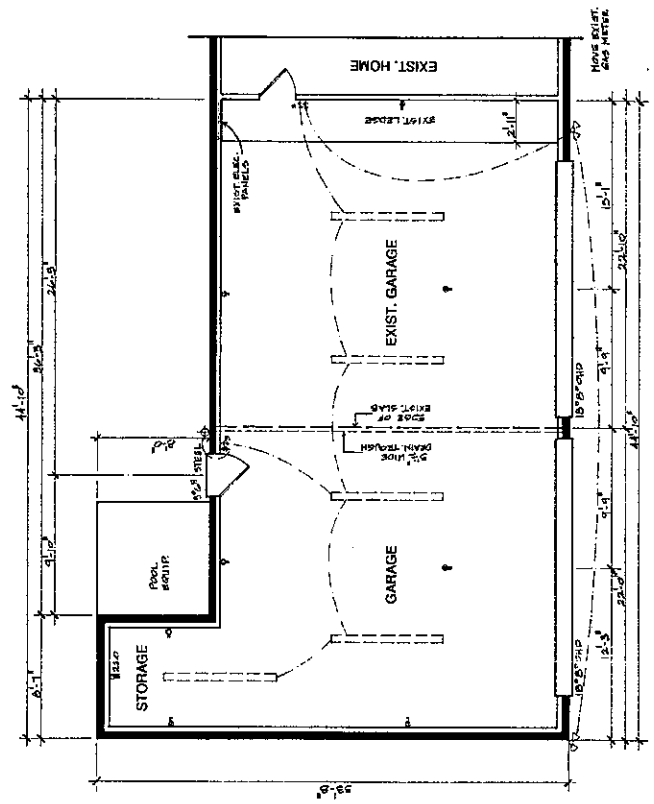
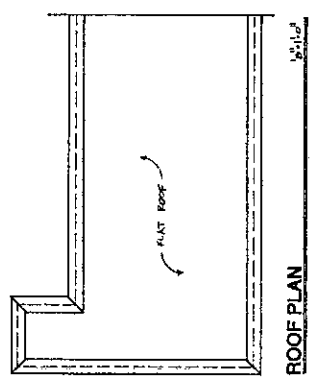
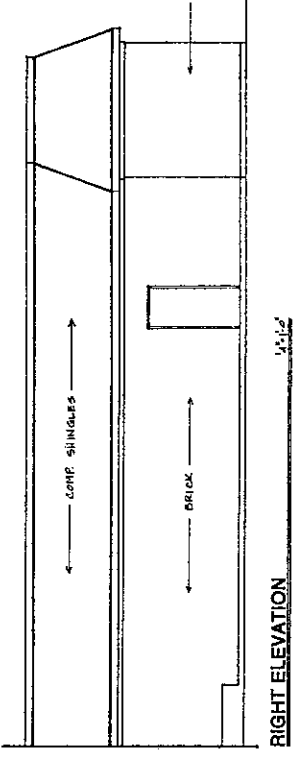
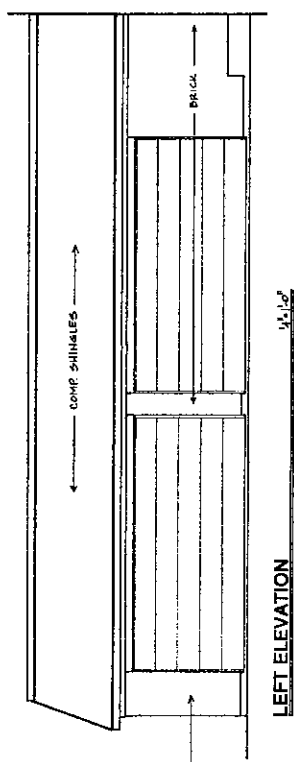
CITY OF DALLAS

DALLAS COUNTY, TX

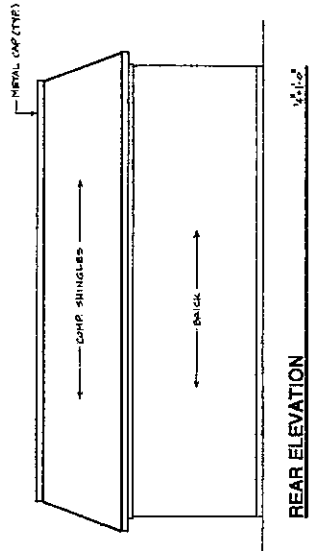


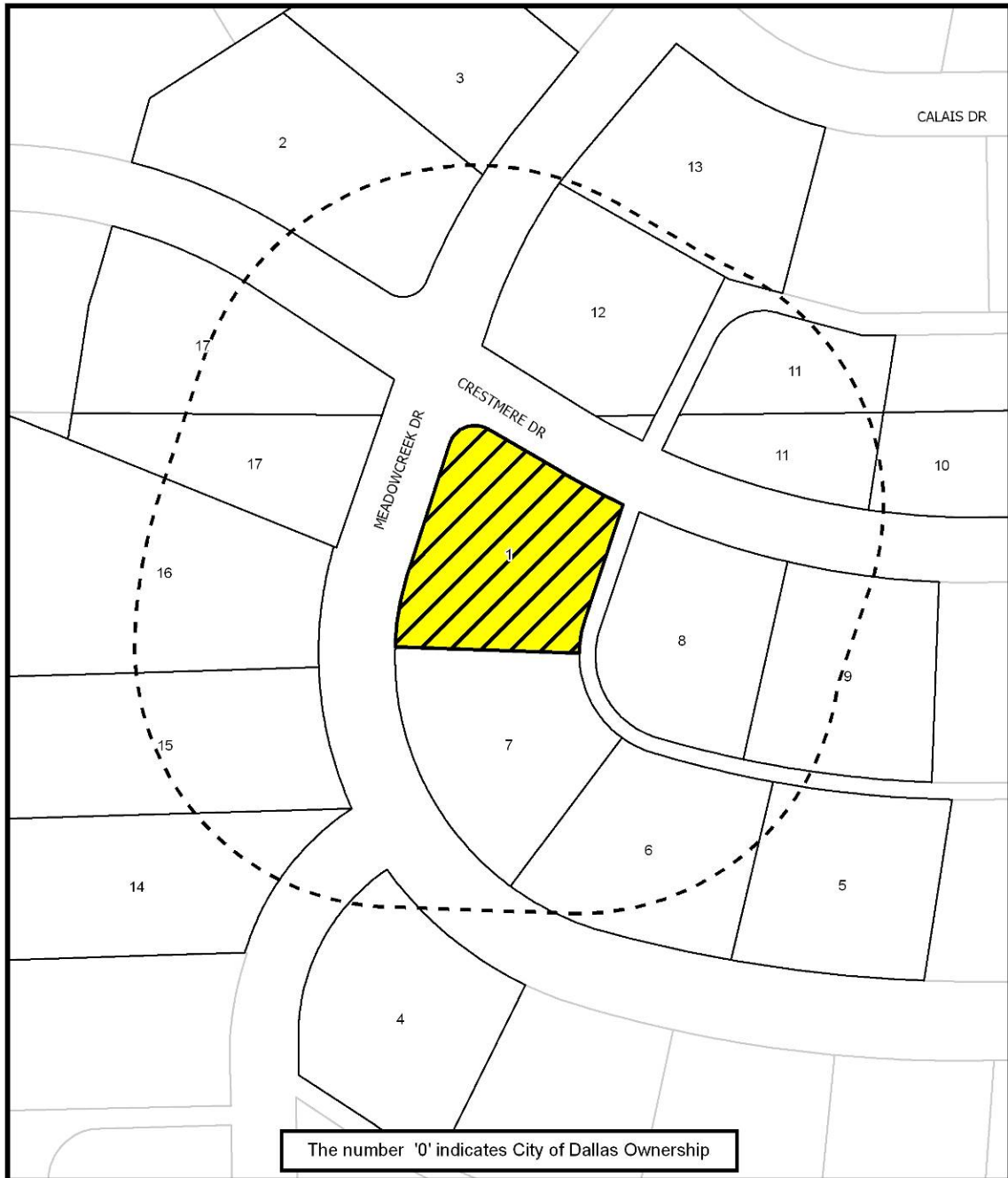
THIS DOCUMENT IS THE PROPERTY OF MODIRE ARCHITECTS, P.C. AND IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREIN. ANY REUSE OR REPRODUCTION OF THIS DOCUMENT WITHOUT THE WRITTEN PERMISSION OF MODIRE ARCHITECTS, P.C. IS STRICTLY PROHIBITED. MODIRE ARCHITECTS, P.C. IS NOT RESPONSIBLE FOR ANY CONSTRUCTION DEFECTS OR OMISSIONS THAT MAY OCCUR DURING THE CONSTRUCTION OF THE PROJECT. THE CLIENT IS ADVISED THAT THE ARCHITECT'S RESPONSIBILITY IS LIMITED TO THE DESIGN AND CONSTRUCTION OF THE PROJECT AS SHOWN ON THESE DRAWINGS. THE ARCHITECT DOES NOT GUARANTEE THE ACCURACY OF THE INFORMATION PROVIDED HEREIN. THE ARCHITECT'S LIABILITY IS LIMITED TO THE AMOUNT OF FEES RECEIVED FOR THE PROJECT. THE ARCHITECT'S LIABILITY DOES NOT EXTEND TO ANY OTHER PROJECTS OR TO ANY OTHER PARTY. THE ARCHITECT'S LIABILITY IS LIMITED TO THE AMOUNT OF FEES RECEIVED FOR THE PROJECT. THE ARCHITECT'S LIABILITY DOES NOT EXTEND TO ANY OTHER PROJECTS OR TO ANY OTHER PARTY.

THE POZAZIDES ADDITION
6506 CRESTMERE DR., DALLAS



ADDITION ADDS 633 S.F. OF GARAGE SPACE
BUILDER TO VERIFY ALL DIMENSIONS AND CALCULATIONS PRIOR TO CONSTRUCTION





 1:1,200	NOTIFICATION		Case no: BDA112-094
	<div style="border: 1px solid black; padding: 2px; display: inline-block;">200'</div> AREA OF NOTIFICATION <div style="border: 1px solid black; padding: 2px; display: inline-block;">17</div> NUMBER OF PROPERTY OWNERS NOTIFIED		Date: 9/20/2012

Notification List of Property Owners

BDA112-094

17 Property Owners Notified

<i>Label #</i>	<i>Address</i>	<i>Owner</i>
1	6506 CRESTMERE DR	POLLACK NOAH C & BINA N
2	6430 MEADOWCREEK DR	JAMES STEVEN M
3	6420 MEADOWCREEK DR	LEBEL JOHN M & KAREN A
4	6516 MEADOWCREEK DR	GUMP H ALLEN & KIMBERLY D
5	6535 MEADOWCREEK DR	ALLEN CLIFTON RAY
6	6525 MEADOWCREEK DR	SLATTERY NATALIE
7	6515 MEADOWCREEK DR	PENN RICHARD WAYNE & JANIS SUE
8	6516 CRESTMERE DR	FARQUHARSON G DALE & JO JEAN
9	6526 CRESTMERE DR	FOWLER J SCOTT & ILENE S
10	6535 CRESTMERE DR	FORMAN JEANNIE DAVIS
11	6525 CRESTMERE DR	BLUE NICOLE A
12	6509 CRESTMERE DR	FIEDELMAN RONALD S
13	6510 CALAIS DR	WEST JUDITH FONG & MELVIN R WEST
14	6516 DARTBROOK DR	BLUM JOANNE L & PAUL C DECHOW
15	6512 MEADOWCREEK DR	NORRIS CARLOS R
16	6508 MEADOWCREEK DR	BEREND JAMES F & KATHERINE M
17	6504 MEADOWCREEK DR	VAISER ALBERT STE 400

FILE NUMBER: BDA 112-100

BUILDING OFFICIAL'S REPORT:

Application of Jonathan Vinson of Jackson Walker for variances to the front yard setback regulations at 330 Bedford Street. This property is more fully described as a building site on Lots 5, 6, 7, & 8 in City Block 7087 and is zoned IR, which requires a front yard setback of 15 feet. The applicant proposes to construct and/or maintain a structure and provide a 0 foot front yard setback, which will require a variance of 15 feet.

LOCATION: 330 Bedford Street

APPLICANT: Jonathan Vinson of Jackson Walker

REQUESTS:

The following appeals have been made on a site that is currently developed with a nonconforming "existing 1-story metal building 5,058 square foot" structure being redeveloped into a restaurant structure/use (Babb Bros. Bar B Q):

1. a variance to the front yard setback regulations of 15' in conjunction with completing and maintaining what is represented on the submitted revised site plan as an approximately 600 square foot "covered sidewalk" structure that is located on the site's Bedford Street front property line or 15' into this 15' required front yard setback.
2. a variance to the front yard setback regulations of 5' in conjunction with completing and maintaining the "covered sidewalk" structure that is located 10' from the site's Pastor Street front property line or 5' into this 15' front yard setback.
3. a variance to the front yard setback regulations of 9.5' in conjunction with completing and maintaining what is represented on the submitted revised site plan as a 588 square foot 1-story building (smoker) expansion that is located 5.5' from the site's Bedford Street front property line or 9.5' into this 15' front yard setback.

STANDARD FOR A VARIANCE:

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

- (A) not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;

- (B) necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
- (C) not granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

STAFF RECOMMENDATION:

Denial

Rationale:

- Although the subject site is slightly irregular in shape with four front yards (typical of any lot in this zoning district with four street frontages), the applicant has not shown that the variance is necessary to permit development of this parcel that differs from other parcels by being of such a restrictive area, shape, or slope that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same IR (Industrial Research) zoning.
- The applicant has not shown that, owing to special conditions, the literal enforcement of the IR zoning would result in an unnecessary hardship. The site is currently developed with a nonconforming approximately 5,000 square foot structure.
- The applicant has not substantiated that the approximately 600 square foot smoker and the approximately 600 square foot “covered sidewalk” to be located in the site’s front yard setbacks is not a self-created hardship or a request for financial reasons only.

BACKGROUND INFORMATION:

Zoning:

Site: IR (Industrial research)
North: IR (Industrial research)
South: IR (Industrial research)
East: IR (Industrial research)
West: IR (Industrial research)

Land Use:

The subject site is developed with a non-residential structure. The area to the north is developed as a surface parking lot; the areas to the east and south are developed with residential uses; and the area to the west is developed with warehouse use.

Zoning/BDA History:

There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

Timeline:

August 24, 2012: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

September 12, 2012: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.

September 19, 2012: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the September 26th deadline to submit additional evidence for staff to factor into their analysis; and the October 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

September 27, 2012: The applicant amended his application and submitted a revised site plan (see Attachment A). The applicant also submitted information for staff review to be considered at the October 2nd staff review team meeting.

October 2, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Building Inspection Senior Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

No review comment sheets with comments were submitted in conjunction with this application.

October 5, 2012: The applicant forwarded additional information beyond what was submitted with the original application, and at the October 2nd staff review team meeting (see Attachment B).

GENERAL FACTS/STAFF ANALYSIS:

- These requests focus on completing and maintaining additions to an existing nonconforming structure being transitioned to a restaurant use. The additions requiring variances include a “smoker” addition on the west side of the structure that aligns with this structure in the Bedford Street front yard setback, and a “covered sidewalk” addition that aligns with this structure in the Pastor Street front yard setback, and further encroaches beyond that of the nonconforming structure into the Bedford Street front yard setback.
- The subject site is bounded on the north by Bedford Street, on the south by Akron Street, on the west by McPherson Street, and on the east by Pastor Street. The property with four street frontages has four front yard setbacks as any property with four street frontages would that is not zoned agricultural, single family, or duplex.
- Structures on lots with IR zoning must have a minimum 15’ front yard setback. A revised site plan has been submitted (see Attachment A) denoting: 1) an “existing 1-story metal building 5,058 sq. ft” near the center of the site; #2) a “1-story building expansion 588 sq. ft.” on the west side of the existing nonconforming structure, and, #3) what appears to be a 600 square foot “covered sidewalk” structure on the north side of the existing nonconforming structure.
- It appears from the submitted revised site plan that approximately 1/10 (approximately 50 square feet) of the approximately 590 square foot building expansion on the west side of the existing nonconforming structure is located in the Bedford Street front yard setback; that all of the approximately 600 square foot “covered sidewalk” structure is located in the Bedford Street front yard setback; and the approximately 5 percent of the approximately 600 square foot “covered sidewalk” structure is located in the Pastor Street front yard setback
- DCAD shows that the “improvements” at 330 Bedford Street include a 5,000 square foot “storage warehouse” built in 1978. Archive maps in the Department of Sustainable Development show that the property was zoned I-2 before the Zoning Transition of 1989, which required a 0 foot front yard setback.
- The subject site is slightly irregular in shape (300’ on the north, approximately 150’ on the south; 115’ on the east, and approximately 130’ on the west) and according to the application, is 0.483 acres (or approximately 21,000 square feet) in area.
- The applicant forwarded additional information beyond what was submitted with the original application (see Attachments A and B).
- The applicant has the burden of proof in establishing the following:
 - That granting the variances to the front yard setback regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variances are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same IR zoning classification.

- The variances would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same IR zoning classification.
- If the Board were to grant the variance requests and impose the submitted site plan as a condition, the structures in the front yard setbacks would be limited to what is shown on this document– which in this case are structures to be located as close as on the Bedford Street front property line (or as much as 15’ into this 15’ front yard setback), and a structure located 10’ from the Pastor Street front property line (or 5’ into this 15’ front yard setback).

Attach A
PS: 1



City of Dallas

APPLICATION/APEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 112-100

Data Relative to Subject Property:

Date: 8-24-12

Location address: 330 Bedford Street Zoning District: IR

Lot No.: 5, 6, 7 and 8 (less ROW) Block No.: 7087 Acreage: 0.483 Census Tract: 43.00

Street Frontage (in Feet): 1) 200.0 2) 112.88 3) 151.7 4) 129.9 5) _____

SW 19

To the Honorable Board of Adjustment :

Owner of Property/or Principal: West Dallas Investments, L.P.

Applicant: Jackson Walker L.L.P. / Jonathan G. Vinson Telephone: 214-953-5941

Mailing Address: 901 Main Street, Suite 6000, Dallas, Texas Zip Code: 75202

Represented by: Jackson Walker L.L.P. / Jonathan G. Vinson Telephone: 214-953-5941

Mailing Address: 901 Main Street, Suite 6000, Dallas, Texas Zip Code: 75202

Affirm that a request has been made for a Variance X, or Special Exception _____, of to the minimum front yard setback regulations of the Dallas Development Code, to permit construction and maintenance of a structure extending 8 feet into the required front yard on Pastor Street. JGV 9/24/12

Application is now made to the Honorable Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described request for the following reason:

The variance should be granted because it is not contrary to the public interest; owing to special conditions, literal enforcement of Chapter 51A would result in unnecessary hardship; and the variance is necessary to permit development commensurate with development upon other parcels with the same zoning, all of which will be documented further in additional materials to be provided to the City Staff.

Note to Applicant: If the relief requested in this application is granted by the Board of Adjustment, said permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

Respectfully submitted: By: Jonathan G. Vinson
Applicant's name printed

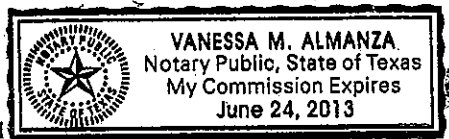
Jonathan G. Vinson
Applicant's signature

Affidavit

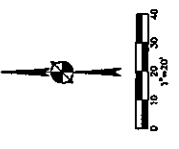
Before me the undersigned on this day personally appeared Jonathan G. Vinson who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

Subscribed and sworn to before me this 24th day of August, 2012

Jonathan G. Vinson
Affiant (Applicant's signature)
Vanessa M. Almanza

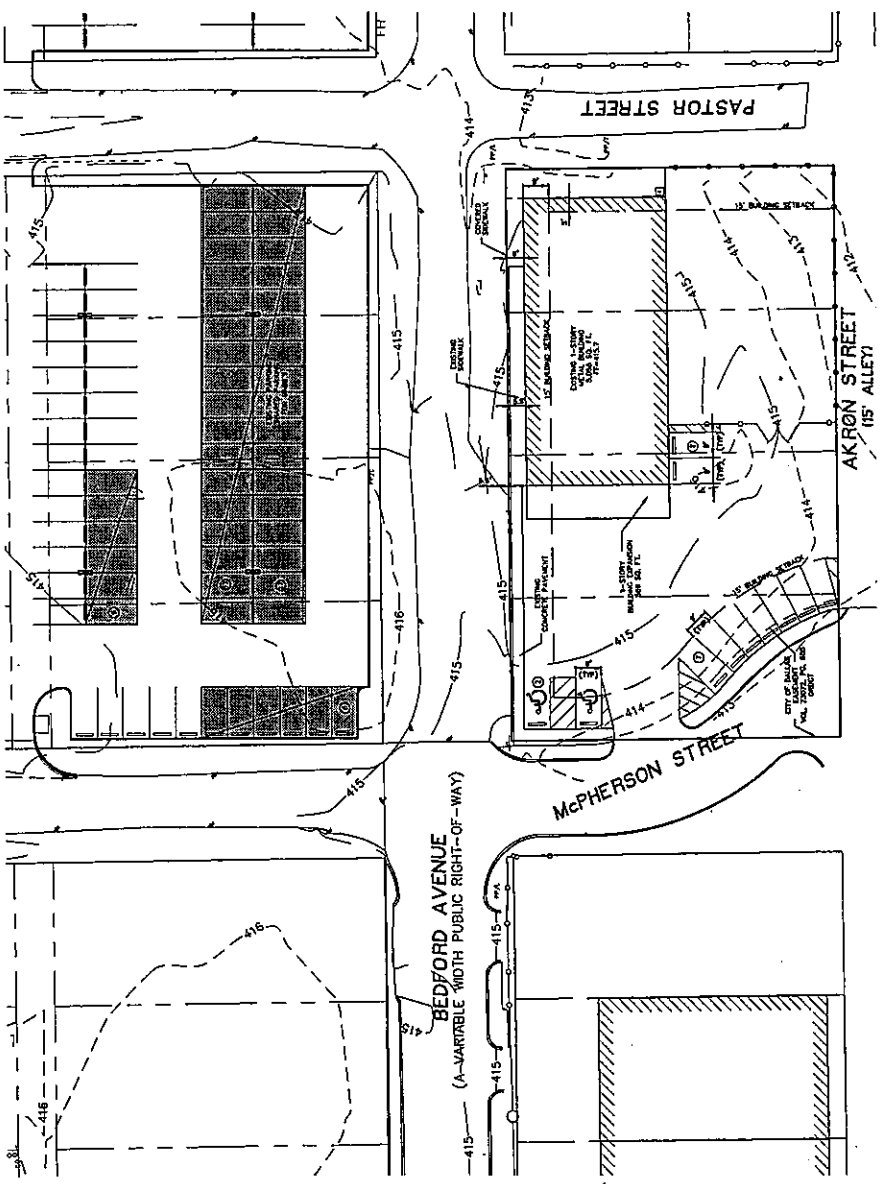


BDA 112-100
 Attachment
 PG 2



CAUTION!
 CONTRACTOR IS TO CONTACT NEIGHBORHOOD OFFICIALS TO VERIFY THE LOCATION OF ALL UTILITIES AND TO OBTAIN NECESSARY PERMITS FOR ALL UTILITIES TO BE MAINTAINED AT LEAST 5 FEET FROM THE EXTERIOR WALLS OF ALL BUILDINGS. ALL UTILITIES TO BE MAINTAINED AT LEAST 5 FEET FROM THE EXTERIOR WALLS OF ALL BUILDINGS. ALL UTILITIES TO BE MAINTAINED AT LEAST 5 FEET FROM THE EXTERIOR WALLS OF ALL BUILDINGS.

PARKING SUMMARY
 TOTAL BLDG. AREA = 1,574 SQ. FT.
 PARKING REQUIRED = 15 (HC: 2)
 TOTAL REQUIRED PARKING = 15
 ON-SITE PARKING = 11 (HC: 2)
 TOTAL SITE PARKING = 11
 TOTAL PARKING = 11



Attach A
of B
MEMORANDUM OF
ACTION TAKEN BY THE
BOARD OF ADJUSTMENT

Date of Hearing _____

Appeal was--Granted OR Denied

Remarks _____

Chairman

Building Official's Report

I hereby certify that Jonathan Vinson

did submit a request for a variance to the front yard setback regulation
at 330 Bedford Street

BDA112-100. Application of Jonathan Vinson for a variance to the front yard setback regulation at 330 Bedford Street. This property is more fully described as a building site on lots 5, 6, 7, & 8 in city block 7087 and is zoned IR, which requires a front yard setback of 15 feet. The applicant proposes to construct and maintain a nonresidential structure and provide a 0 foot front yard setback, which will require a 15 foot variance to the front yard setback regulation.

Sincerely,


Lloyd Denman, Building Official



Jonathan G. Vinson
(214) 953-5941 (Direct Dial)
(214) 661-6809 (Direct Fax)
jvinson@jw.com

October 5, 2012

Hon. Chair and Members, Panel A
Zoning Board of Adjustment
City of Dallas
1500 Marilla Street, Room 5BN
Dallas, Texas 75201

Re: ***BDA 112-100; 330 Bedford Street***

Dear Members of the Board of Adjustment:

I am sending you this letter to explain the rationale for our request and how it meets the required variance standard, and to respectfully ask for a Staff recommendation of approval.

I. The Site; Proposed Project. The request site consists of a net area of 0.483 acres in West Dallas bounded by Bedford Avenue on the north, Pastor Street on the east, McPherson Street on the west and what is shown as Akron Street on the south. Accompanying this letter are a survey and an aerial photograph to orient you. There is an existing one story metal building on the property which was originally built as a warehouse in 1978. This is an important fact to which I will return later. This building contains 5,058 square feet. It is shown on both the survey and the proposed site plan, also accompanying this letter. I have also attached a series of captioned site photos for your information.

The Applicant proposes to convert this building into a restaurant, Babb Brothers Barbeque, as part of the new Trinity Groves redevelopment project in West Dallas. In addition to using the existing building for the main portion of the restaurant, the applicant proposes to add a one story, 588 square foot expansion on the west end of the existing building. This expansion is also shown on the site plan (please note that the one story, 1,283 square foot building expansion originally proposed for the south side of the building has been deleted).

The 588 square foot building expansion, as shown in the conceptual elevation rendering and in the floor plan, will not be used for customer seating, nor is it publically accessible; instead, it is non-air conditioned or heated space, containing primarily the smoker and the wood storage racks as well as a cooler and some other storage.

The existing building was built under what was then I-2 zoning, which required a zero front yard setback. During zoning transition in 1989, the I-2 zoning for this entire area was transitioned into IR zoning, which requires a 15 foot front yard setback. This rendered the

Hon. Chair and Members, Panel A
Zoning Board of Adjustment
City of Dallas
October 5, 2012
Page 2

existing building nonconforming to some extent (a nine foot intrusion of the *existing* building), as shown on the site plan.

II. Reason for Variance Request. The setback issue for the new construction arises due to the 588 square foot building expansion on the west for the smoker, wood storage and other storage uses, and for an awning which will cover the sidewalk on the front (Bedford Avenue) side of the building. Both of these items are new construction, and therefore, to the extent that they intrude into the 15 foot setbacks created from Bedford Avenue and from Pastor Street by the current IR zoning classification, require a front yard setback variance. The awning intrudes six additional feet from the face of the existing building, for a total intrusion of 15 feet (up to the property line), and the smoker and storage area intrudes nine feet (to line up with the face of the existing building), both as shown on the site plan attached.

III. Variance Standard. This variance request meets the property hardship standard mandated by the *Dallas Development Code* in several respects. *First*, as you will see from the site plan, this is an *irregularly shaped lot*. In 1973 there was a significant right-of-way take from the west end of the property to realign McPherson Street. *In addition, the property has four front yards*: Bedford Avenue, Pastor Street, McPherson Street, and Akron Street. This creates front yard setbacks on each side. Note that Akron Street is a 15 foot unimproved right-of-way, and in fact a site visit reveals that it is essentially an overgrown vacant lot which is practically indistinguishable from the properties around it, but nonetheless is shown on the survey and other maps as right-of-way, and therefore also triggers a front yard setback.

The third property hardship factor is the fact that the zoning setback requirement changed in 1989 to render the existing building nonconforming as to setback on the Bedford and Pastor sides, which means that anything new which lines up with (the smoker area), or extends from (the awning), the existing building requires a setback variance. Fourth and finally, there was an existing structure attached to the building on the Bedford Avenue side which was removed. Once that structure was removed, no other structure, such as the new awning, could be reinstalled without obtaining a setback variance. The Applicant discovered this part way through the construction process, and is now requesting this variance.

Please note also that the proposed awning, as shown in the conceptual elevation study, will be used simply as customer waiting area, for decorative planting, and for some additional storage of wood for the barbeque pit. This is not conditioned space and is merely for the convenience of the customers. It does not add any seating area to the restaurant and will in no way have any negative impact on any nearby properties – in fact, it faces a large parking lot, owned by the applicant, across Bedford Street.

This request also meets the other standards for the granting of a variance, that is, it is necessary for development commensurate with other development in this zoning classification, much of which in this area is likely in a nonconforming condition after the change in zoning

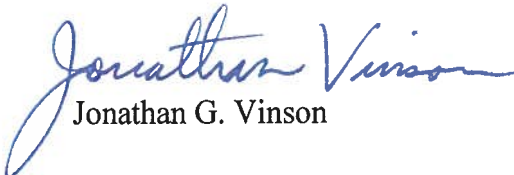
from I-2 to IR; it is not self-created or personal, nor is it for financial reasons only; and, finally, it is not contrary to the public interest.

In fact, the public interest will be very well served by granting of the variance, in that it is integral to this particular project, which is to provide an additional restaurant use in the Trinity Groves redevelopment area, which has lately received much positive attention from the City of Dallas and other groups, such as the West Dallas Chamber of Commerce, as a very significant redevelopment of the Singleton Boulevard area in West Dallas (see attached media coverage).

The surrounding neighborhood is almost entirely industrial, and this restaurant use will have all required Code parking via parking on site and across the street on a remote parking lot also controlled by the applicant. Because the small intrusions into the setback are only for, in part, wood storage and the smoker for the restaurant, and for non-air conditioned or enclosed awning space for customer convenience, and will not increase the customer capacity of the restaurant, this will clearly have no negative impact on adjacent properties, many of which are industrial or vacant, and the majority of which in the immediate area are part of the Trinity Groves redevelopment effort and are owned by the Applicant (see attached parcel map).

Thank you very much for your consideration of these points. We look forward to appearing at your October 16th hearing, where we will respectfully ask that you approve our setback variance request.

Very truly yours,


Jonathan G. Vinson

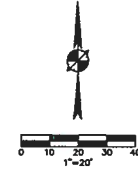
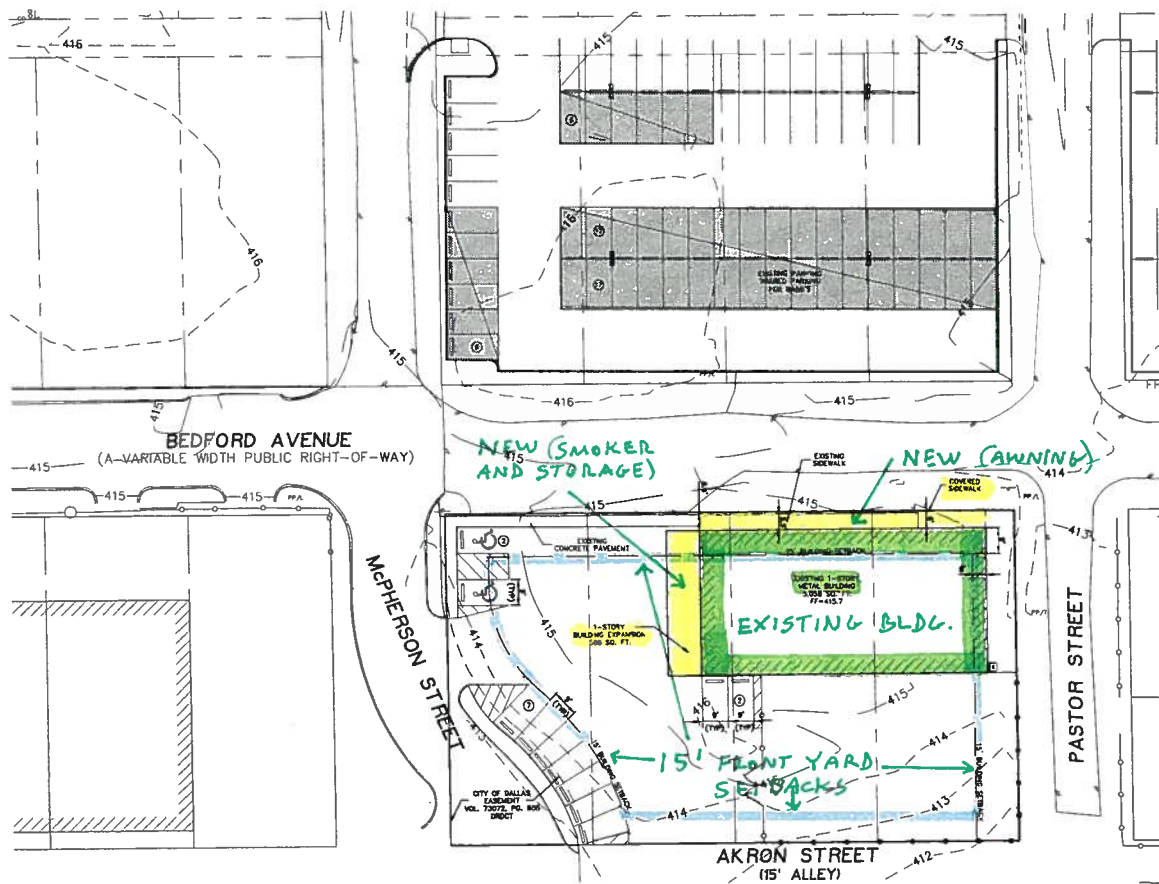
JGV/dv

cc: Jim Reynolds
Susan Mead

8523605v.1 139219/00001

List of Attachments

1. Survey of site (illustrating property hardship conditions).
2. Site Plan (illustrating requested variance).
3. Proposed Floor Plan (showing existing and new floor area).
4. Conceptual elevation study (illustrative only, not dimensioned).
5. Captioned aerial and site photographs (numbered 1 through 10 for reference).
6. Area parcel map showing properties owned by Applicant.
7. Trinity Groves restaurant incubator web page and media coverage.



CAUTION !!

CONTRACTOR IS TO CONTACT TEXAS ONE-CALL SYSTEM (1-800-368-5848) OR OTHER UTILITY LOCATING SERVICES AT LEAST 48 HOURS PRIOR TO CONSTRUCTION ACTIVITIES. BURY & PARTNERS IS NOT RESPONSIBLE FOR SHOWING ALL EXISTING UTILITIES IN THIS PROJECT AREA NOR FOR VERIFYING THE EXACT LOCATIONS OF UTILITIES IN THESE DRAWINGS.

PARKING SUMMARY

TOTAL BLDG. SQ. FT. = 5,646 SQ. FT.
 PARKING REQUIRED = 1 STALL / 100 SQ. FT.
 TOTAL REQUIRED PARKING = 57

ON-SITE PARKING = 11 (HC: 2)
 OFF-SITE PARKING = 46
 TOTAL PARKING = 57

Bury+Partners
 618 North 222nd Street, Suite 100
 Tulsa, Texas 74205
 Phone: (918) 438-1000
 Fax: (918) 438-1001
 www.buryandpartners.com

**330 BEDFORD
 SITE PLAN**

**330 BEDFORD
 WEST DALLAS / TRINITY GROVES
 CITY OF DALLAS**

Scale: 1" = 20'
 Date: 09-23-12
 Designed By: RLP
 Drawn By: MAM
 Checked By: RLP
 Title: 330 BEDFORD - SITE PLAN
 Project No.: 0110301-0000

SHEET
C21

BDA 112-100
 Attach B
 Pg 6

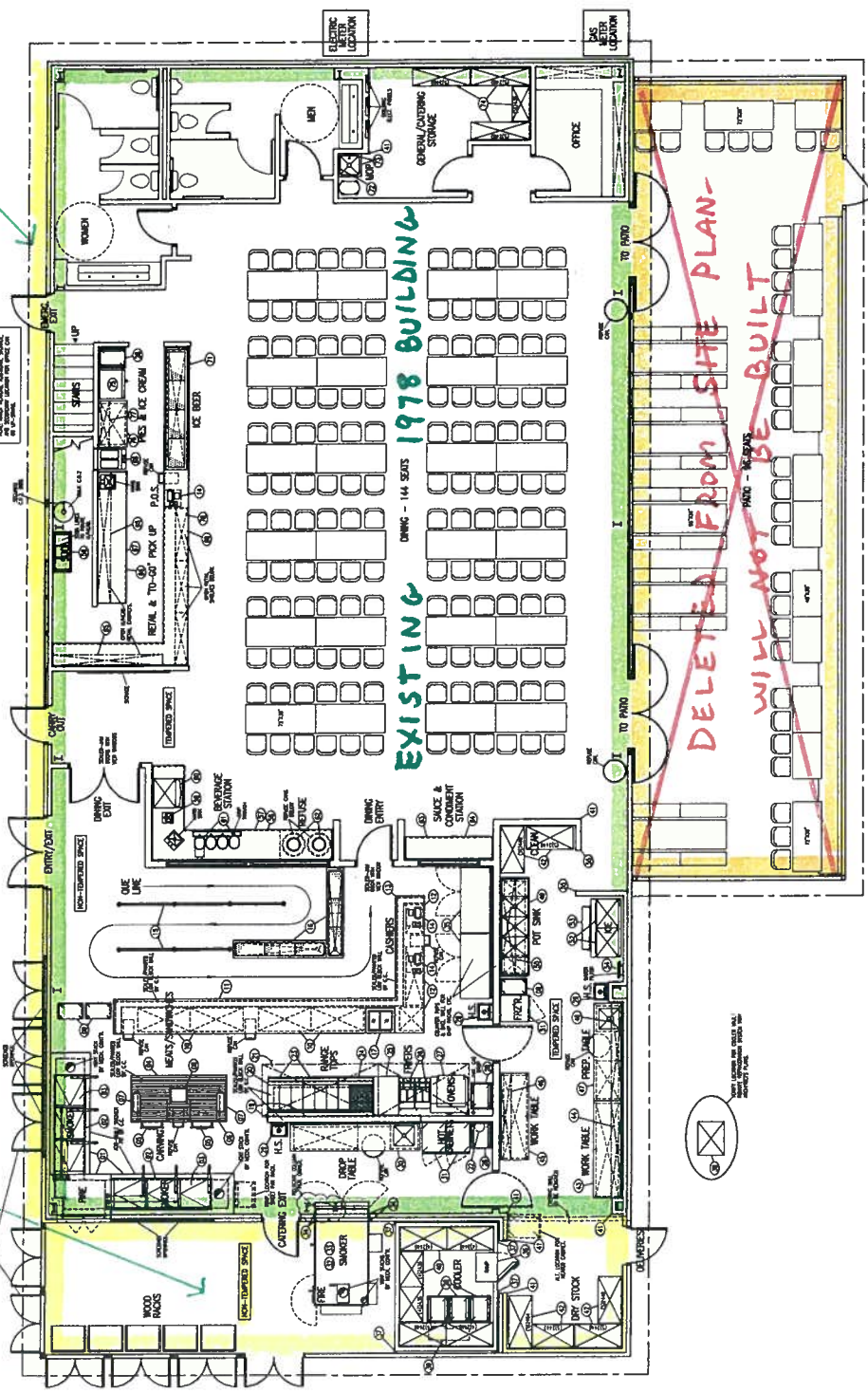
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AWNING (REPLACES PREVIOUS PORCH)

NEW SMOKER AND STORAGE AREA

EXISTING 1978 BUILDING

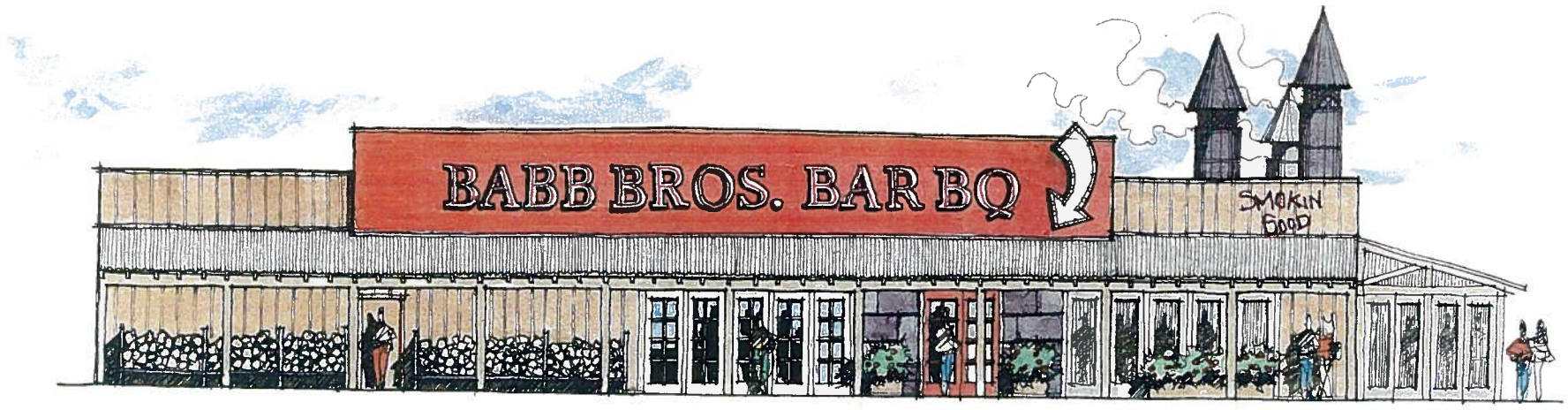
~~DELETED FROM SITE PLAN - WILL NOT BE BUILT~~



GENERAL NOTES:
 1. ALL WORK SHALL BE IN ACCORDANCE WITH THE NATIONAL CONFERENCE OF BUILDING OFFICIALS (N.C.B.O.) CODES AND ALL APPLICABLE LOCAL ORDINANCES.
 2. ALL WORK SHALL BE IN ACCORDANCE WITH THE NATIONAL CONFERENCE OF BUILDING OFFICIALS (N.C.B.O.) CODES AND ALL APPLICABLE LOCAL ORDINANCES.
 3. THE NATIONAL CONFERENCE OF BUILDING OFFICIALS (N.C.B.O.) CODES AND ALL APPLICABLE LOCAL ORDINANCES SHALL BE THE BASIS FOR THE DESIGN AND CONSTRUCTION OF THIS PROJECT.
 4. THE NATIONAL CONFERENCE OF BUILDING OFFICIALS (N.C.B.O.) CODES AND ALL APPLICABLE LOCAL ORDINANCES SHALL BE THE BASIS FOR THE DESIGN AND CONSTRUCTION OF THIS PROJECT.
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1 FOOD FACILITIES ARRANGEMENT PLAN
 SCALE: 1/8" = 1'-0"

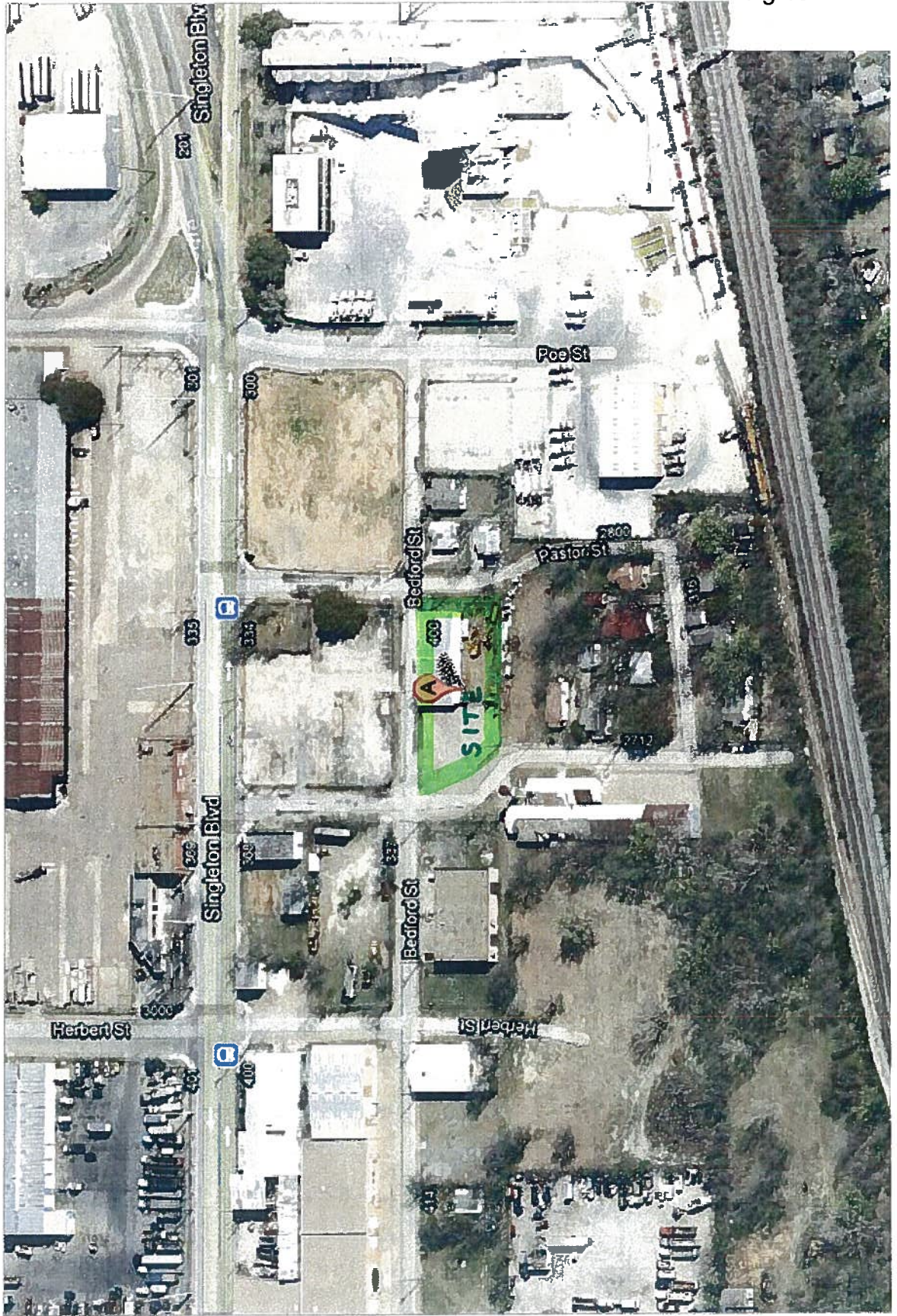
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ELEVATION STUDY - JUNE 10, 2012



1. Overhead aerial view of site and vicinity.



2. Oblique (and more recent) aerial view of site and vicinity.



3. View of site from across surface parking lot (north side of Bedford Street).



4. View of site from north side of Bedford Street.



5. Front view of additional smoker/storage area.



6. Side view of additional smoker/storage area.



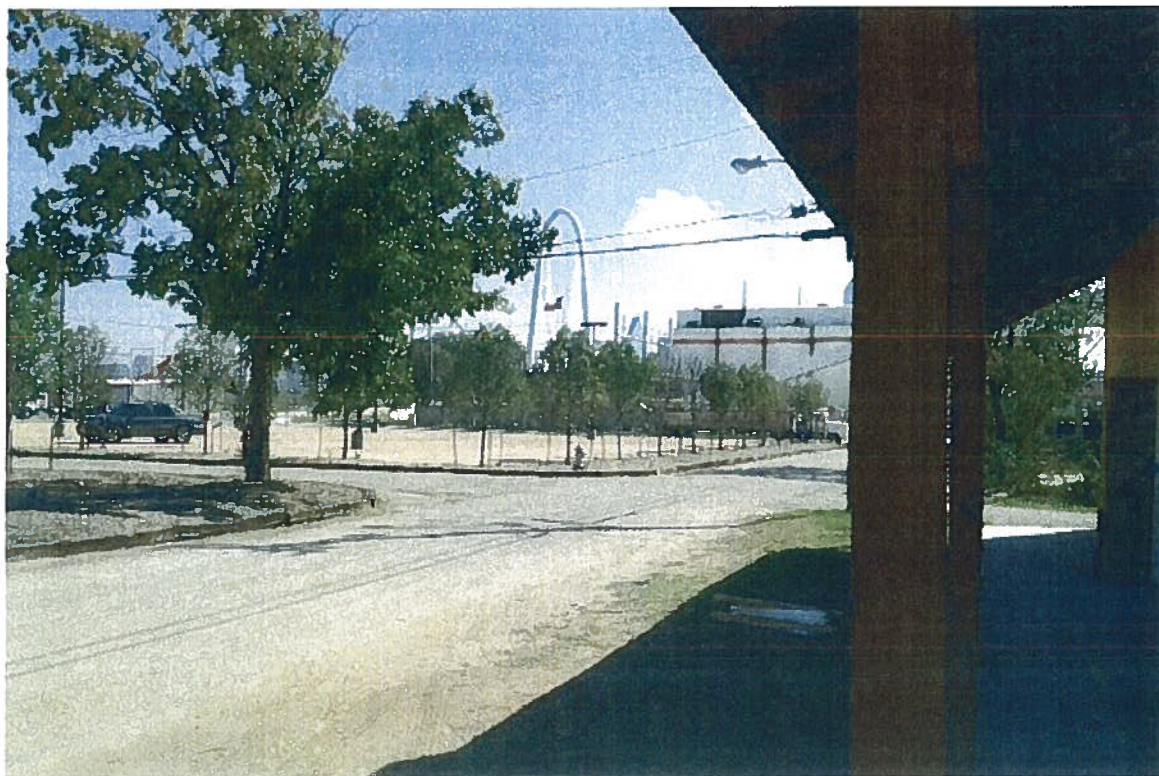
7. View of Pastor Street (dead-end street-site/building on right).



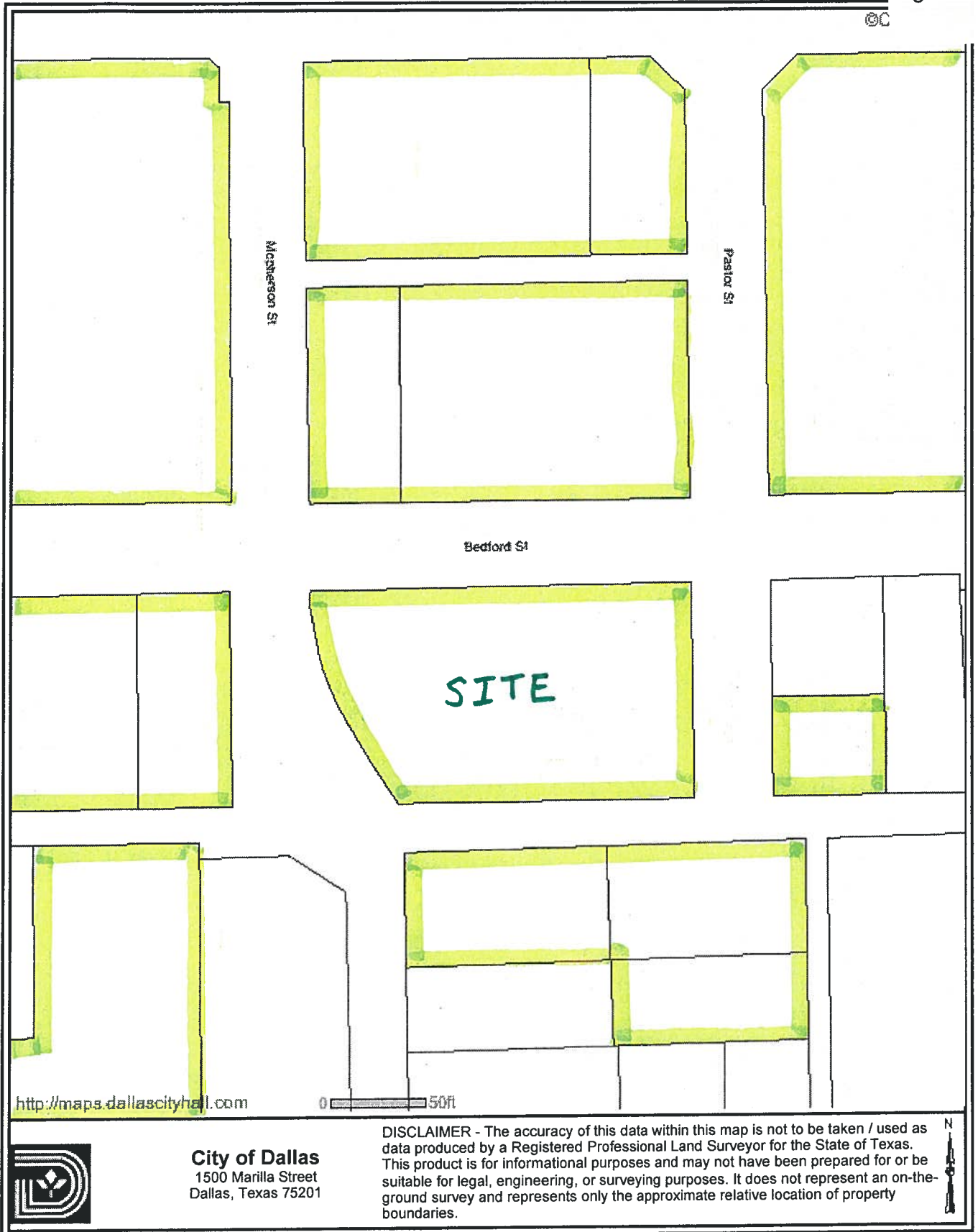
8. Corner of Akron Street and Pastor Street (completely unimproved).



9. View from site of surface parking lot on north side of Bedford Street.



10. View from front of building to east.



<http://maps.dallascityhall.com>



City of Dallas
1500 Marilla Street
Dallas, Texas 75201

DISCLAIMER - The accuracy of this data within this map is not to be taken / used as data produced by a Registered Professional Land Surveyor for the State of Texas. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.



Parcels owned by West Dallas Investments (developer of Trinity Groves)



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About

Trinity Groves, a Landmark in Innovation.

Trinity Groves is a new restaurant, retail, artist and entertainment destination at the base of the new Margaret Hunt Hill Bridge in West Dallas. Trinity Groves will foster the growth of startup concepts and businesses, and capitalize on



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Dallas' culture of innovation and entrepreneurship.

Trinity Groves was created by and is part of West Dallas Investments which consists of Phil Romano, Stuart Fitts and Butch McGregor. The 15 acre entertainment destination is located directly next to the Trinity River and also at the foot of the Margaret Hunt Hill Suspension Bridge.



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Signing Day deals don't always pan out **SHERRINGTON: It's not always the player's fault** SPORTSDAY IC

The Dallas Morning News

dallasnews.com

Texas' Leading News Source \$1.00 Dallas, Texas, Wednesday, February 1, 2012

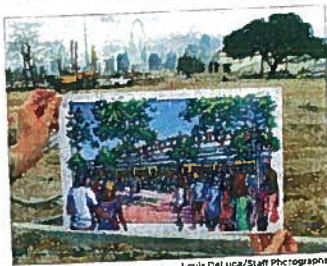
WEST DALLAS

Restaurant incubator planned by Margaret Hunt Hill Bridge

By **KAREN ROBINSON-JACOBS**
 Staff Writer
 krob1309@dallasnews.com

Trinity Groves, the first major West Dallas development tied to the opening of the Margaret Hunt Hill Bridge, is expected to bring about 15 restaurant concepts and retailers to an area bereft of major attractions, the project's backers said Tuesday.

In an interview with *The Dallas Morning News*, restaurateur Phil Romano and his business partner Stuart Pitts outlined plans for a "restaurant incubator," where seasoned chefs and newbies can try out an idea. The developers described the incubator, which is expected to open this summer, as the Silicon Valley for restaurants and the first of its kind in the nation.



An artist's rendering shows the vision for Trinity Groves, a development backed by restaurateur Phil Romano and two others, in the shadow of the Margaret Hunt Hill Bridge.

Louis DeLuca/Staff Photographer

See **RESTAURANT** Page 2A

In an interview with *The Dallas Morning News*,...



Restaurants and shops are planned in the 13-acre first phase of Trinity Groves.

Restaurant incubator in works

Continued from Page 1A

The area along Singleton Boulevard between Amnicore and Herbert streets also will be home to a cooking school, an art gallery, an artisan cheese maker, a butcher shop and other attractions.

The two investors, along with partner Larry "Bitch" McGee, make up West Dallas Investments LP, which has been buying up property in the area since at least 2005. The company has amassed more than 1,000 properties on 65 acres in West Dallas.

The initial restaurants and shops will be on about 13 acres along the foot of the Margaret Hunt Hill Bridge, which is to open in early March. The project will include renovation of some existing buildings and new construction.

Years from now, development could include low-rise office and multifamily buildings.

"We wanted to activate that area, and we knew that the bridge would promote economic development," said Bill Jordan, an assistant city manager. "We're glad to see somebody take the initiative and get something going."

Romano and Pitts declined to discuss how much money they have invested in the project but said that so far no city money has been spent.

Romano said he would seek city assistance at some point, but did not specify when or how much city money would be involved.



Restaurateur Phil Romano and his partners in West Dallas Investments have amassed about 100 properties on 65 acres in the area by the Margaret Hunt Hill Bridge.

Change in route

The 13 acres included in the initial phase, stretching from Pugh Street to south of Bedford Street, are also part of a Municipal Management District called Trinity River West. Such districts have special taxing authority to raise money for infrastructure and buildings designed for public use, such as a fire station.

The development is causing quite a stir because it has been one of the poorest areas of the city, where car repair shops and industrial buildings dot the landscape.

The city is counting on the bridge, and its 12,000 cars daily, to help spur slow but steady development in the area.

Romano, who launched restaurant concepts such as Puddrucker's and Romano's

Macaroni Grill, was particularly animated when talking about the first phase of the project and the restaurant incubator, which will take shape in a former loading dock.

Starting from scratch

Chris with an idea for a concept would present the idea and a business plan to the development's advisory committee, which will look at the viability of the concept and the food idea. The committee includes marquee names such as chefs Stephan Pyles, Kent Rathbun, Nick Radovius and restaurant developer Mark Ibrink. Committee members stand to share in the proceeds if a concept gets expanded beyond Trinity Groves.

Approved concepts would get up shop in restaurants of about 2,500 square feet, with

room for about 200 people, indoors and outdoors.

Up to 50 people have submitted restaurant ideas, from barbecue joints to Mexican food, and the company has sent 14 letters of interest with at least \$1.5 million per year.

Trinity Groves will not lease out the space, but will receive a percentage of gross sales. Developers would like to see the restaurant bring in at least \$1 million per year.

If the concept doesn't work, the space shuts down and is replaced by another startup, perhaps with the same chef-entrepreneur.

'Wildcatting'

"It's almost like wildcatting," Romano said. "Wildcat and re-fill until we hit oil." If the startup expands or gets purchased by a national

chain, the members of the advisory committee stand to get 10 percent of the proceeds.

The development also will include food- and art-related retailers, including a produce market and sausage maker.

Romano said the first of the shops is expected to open this summer, but he cautioned that it's "not like a spring mall."

"It's a rolling process," he said, adding that businesses will open when they're ready.

He expects the development to create more than 1,000 jobs.

Romano's list of hoped-for add-ons include a back-to-back branch of the Dallas Arboretum and an off-road-way-type theater.

"This isn't a second-hand development," said Romano. "This is a 30-year development. We don't know what it's going to be."



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Update on Trinity Groves: Restaurateurs are Lining Up. Potential Reality TV Show About Project Revealed (<http://sidedish.dmagazine.com/2012/10/04/update-on-trinity-groves-restaurateurs-are-lining-up-potential-reality-tv-show-about-project-revealed/>)

Posted on October 4th, 2012 9:00am by [Nancy Nichols \(mailto:nancyn@dmagazine.com\)](mailto:nancyn@dmagazine.com)

Filed under [As the Restaurant Turns \(http://sidedish.dmagazine.com/category/as-the-restaurant-turns/\)](http://sidedish.dmagazine.com/category/as-the-restaurant-turns/), [Hot dogs are the new hamburger \(http://sidedish.dmagazine.com/category/hot-dogs-are-the-new-hamburger/\)](http://sidedish.dmagazine.com/category/hot-dogs-are-the-new-hamburger/), [How to Open a Restaurant 101 \(http://sidedish.dmagazine.com/category/how-to-open-a-restaurant-101/\)](http://sidedish.dmagazine.com/category/how-to-open-a-restaurant-101/), [Incubator News \(http://sidedish.dmagazine.com/category/incubator-news/\)](http://sidedish.dmagazine.com/category/incubator-news/), [restaurant business news \(http://sidedish.dmagazine.com/category/restaurant-business-news/\)](http://sidedish.dmagazine.com/category/restaurant-business-news/), [Sylvan/Thirty \(http://sidedish.dmagazine.com/category/restaurant-business-news/sylvan30/\)](http://sidedish.dmagazine.com/category/restaurant-business-news/sylvan30/)



(http://sidedish.dmagazine.com/wp-content/uploads/2012/10/IMG_6872.jpg)

Trinity Groves: Most of the front spaces in the green building are spoken for.

Last February, [I took my first tour of Trinity Groves \(http://sidedish.dmagazine.com/2012/02/07/trinity-groves-report-first-restaurant-in-restaurant-incubator-program-is-approved/\)](http://sidedish.dmagazine.com/2012/02/07/trinity-groves-report-first-restaurant-in-restaurant-incubator-program-is-approved/), the 13-acre restaurant-retail-artist-and-entertainment development at the base of the west end of the Margaret Hunt Hill Bridge. Developers Phil Romano, Stuart Fitts, and Larry “Butch” McGregor expect Trinity Groves to be a hotbed for entrepreneurial thinking. They compare the multi-use development filled with restaurants, shops, and potential living spaces to be what Silicon Valley is to high tech or what Ghirardelli Square is to San Francisco. They’ve cleared out the old truck terminal building (green building pictured above) and some surrounding spaces and are attracting some local culinary talent to participate in their Restaurant Concept Incubator program. Their vision is to house 30 concepts from this program plus restaurants from individual investors.

[\(http://sidedish.dmagazine.com/2012/05/08/open-letter-to-mark-cuban-shark-tank-for-dallas-restaurateurs-i%E2%80%99d-watch-it/\)](http://sidedish.dmagazine.com/2012/05/08/open-letter-to-mark-cuban-shark-tank-for-dallas-restaurateurs-i%E2%80%99d-watch-it/) Romano has commissioned a pilot for *The Restaurant Maker*, a reality TV show for budding restaurateurs not unlike the process *Shark Tank* participants go through. I watched some of 45-minute promotional video and it’s well done. There are three episodes in the can. Each show features an potential talent

going through the grueling process of getting a shot at owning their own restaurant. Hmm, this idea too familiar: [Mark Cuban \(http://sidedish.dmagazine.com/2012/05/08/open-letter-to-mark-cuban-shark-tank-restaurateurs-i%E2%80%99d-watch-it/\)](http://sidedish.dmagazine.com/2012/05/08/open-letter-to-mark-cuban-shark-tank-restaurateurs-i%E2%80%99d-watch-it/), [I gave you the chance to make it big with me. \(http://sidedish.dmagazine.com/2012/05/08/open-letter-to-mark-cuban-shark-tank-for-dallas-restaurateurs-i%E2%80%99d-watch-it/\)](http://sidedish.dmagazine.com/2012/05/08/open-letter-to-mark-cuban-shark-tank-for-dallas-restaurateurs-i%E2%80%99d-watch-it/)

Jump for exciting construction site photos and insidery information about Trinity Groves.



http://sidedish.dmagazine.com/wp-content/uploads/2012/10/IMG_6850.jpg

First restaurant to open is Babbs Bros BBQ & Blues.

To even be considered for the project one must present the Food and Concept Advisory Committee with an idea for a restaurant that will not only work in a space in Trinity Groves, it has to be good enough to, eventually, roll out multiple units. The good news is that the program is structured to give each business an even playing field: Every restaurant space is the same size (2,500 square feet) and no concept can cost more than \$500,000 and must have a sales projection of \$1.5 million. The kind of numbers that represent a concept that is “expandable.”



http://sidedish.dmagazine.com/wp-content/uploads/2012/10/IMG_6879.jpg

Chef Sharon Van Meter's 3015 at Trinity Groves

The first victorious person to survive the [Restaurant Concept Incubator is Mike Babb](http://sidedish.dmagazine.com/2012/02/07/trinity-groves-report-first-restaurant-in-restaurant-incubator-program-is-approved/) (<http://sidedish.dmagazine.com/2012/02/07/trinity-groves-report-first-restaurant-in-restaurant-incubator-program-is-approved/>). His restaurant, Babbs Bros BBQ & Blues, is set to open in early November. The second restaurant, Hofmann Hots (<http://www.hofmannhotdogs.com/>), is Phil Romano's new hot dog-and-sausage-centric concept. He plans to spread them "like Subways." Four Corners Brewery (<http://www.fcbrewing.com/>) should be open by the end of October. Chef Sharon Van Meter just debuted [3015 at Trinity Groves](http://3015dallas.com/) (<http://3015dallas.com/>), a 10,000 square-foot event facility designed for large parties, culinary corporate team building, and a cooking school. She also has plans to open a small French beignet coffee house called Beignet Bridge Club. (Trending: beignets are the new donuts.)

Tuesday, I met with concept consultant Mark Brezinski and he showed me the master plan. He tossed out a lot of familiar names in the restaurant business who are not only interested in getting into a space at Trinity Groves, they have already turned in written proposals, gone through tastings, and signed letters of intent. I fear my tires will be slashed if I even hint at the some of the big names he tossed out. If Trinity Groves gathers half of what was mentioned Tuesday, it will be a huge draw.



First food tenant opens at Trinity Groves in West Dallas

By KAREN ROBINSON-JACOBS

Staff Writer

krjacobs@dallasnews.com

Published: 26 September 2012 08:34 PM

The first food-related tenant at Trinity Groves, a nascent food and entertainment district taking shape at the foot of the Margaret Hunt Hill Bridge, makes its official debut Thursday.

The brainchild of caterer and cooking instructor Sharon Van Meter, 3015 Trinity Groves will serve as the site of catered events, corporate team-building exercises and cooking classes. Thursday evening it will host a fundraiser for Hunger Busters, a nonprofit that provides meals for children in need.

Hunger Busters was created in 2000 by restaurateur Philip Romano and his wife, Lillie. Romano, Larry "Butch" McGregor and Stuart Fitts are key investors in Trinity Groves, which is rising at the edge of La Bajada neighborhood along Singleton Boulevard.

A central focus of Trinity Groves will be offering neophyte restaurateurs space in the project, access to investor funding and help creating a business plan. Operators will pay a portion of sales as rent.

In exchange, investors get at least a 50 percent stake in the restaurants and boutique retail shops that will open beginning in November.

Van Meter, a longtime local caterer, needed none of those. She was attracted to the neighborhood near downtown by the potential she sees in the development and by the vibe.

"I think it has good karma," she said as workers removed the last traces of a just-ended corporate event. "Can you feel it when you walk in? I do."

Unlike the coming start-ups, Van Meter leases her 10,000-square-foot space long-term. She's already 80 percent booked up with events for October and November and anticipates she'll be booked solid in December.

She plans to open a restaurant nearby as more of the project is developed.

In November, Van Meter will be joined by Mike Babb, his brother Bob and about 40 workers with Babb Bros. BBQ & Blues on Bedford Avenue.

Mike Babb, who has a rib catering business in Arlington, said he would not have had the money to open a restaurant, or the knowhow to craft a business plan, without Trinity Groves.

Also planned for November is Four Corners Brewing Co., a microbrewery, and Hofmann Hots, a hot dog restaurant also co-owned by Romano.

When investors announced plans for Trinity Groves in January, they expected to have the first food spots up and running by summer.

That was before more than 150 inquiries and 30 business plans poured in from would-be tenants, said Jim Reynolds, senior vice president of development and construction with Trinity Groves.

Reynolds estimates the Trinity Groves backers have invested \$40 million in the project including the cost to purchase more than 60 acres of property in the West Dallas neighborhood.

Trinity Groves only takes up about 15 acres and eventually could house more than 20 restaurants.

Investors still are working with the city and neighborhood groups on plans for the remaining acreage.

Follow Karen Robinson-Jacobs on Twitter at @krobjake.

EMAIL |

Restaurant incubators lend a helping hand

Complexes give underfunded fledgling brands a boost

August 20, 2012 | By Ron Ruggless

In a 15-acre area of Dallas, restaurant impresario Phil Romano is doing what he does best — giving life to new concepts.

This time, however, Romano, who has created numerous brands, including Fuddruckers and Romano's Macaroni Grill, is nurturing the concepts of others at his Trinity Groves Restaurant Concept Incubator.

The incubator, which aims to produce as many as 30 foodservice businesses in the next few years, is one of several such ventures promoting restaurant entrepreneurship at a time when funding can be difficult to come by and the restaurant landscape is particularly competitive.

Among the other incubators nurturing fledgling concepts are American Gonzo Food Corp., a Los Angeles-based venture funded by Paul Hibler, founder of the growing Pitfire Artisan Pizza chain, and an unnamed investor. (See related story on page 8.)

And several more communal-oriented enterprises have also sprung up, including La Cocina incubator in San Francisco, the Kitchen Incubator in Houston and the Hot Bread Kitchen Incubator at La Marqueta in East Harlem, N.Y.

Aspiring restaurateurs are not the only beneficiaries of the incubators — big companies are too, said Romano, several of whose concepts were purchased by large corporations. Meanwhile, Romano continues to grow several of his other brainchildren, including Coal Vines, Eatzi's and Nick & Sam's.

"Every major company out there has someone in strategic development looking for concepts," said Romano during a recent tour of the 75 acres that he and his investors have purchased over the past seven years just west of downtown Dallas. "We want to be a shopping center of sorts for those concepts."

Room to grow

Romano and his West Dallas Investments LP have taken the first 15 to 20 acres at the foot of a new Santiago Calatrava-designed bridge that opened in March and made it the centerpiece of Trinity Groves Restaurant Incubator.

Existing buildings offer about 150,000 to 160,000 square feet of space that Romano envisions sitting in what might eventually resemble "a European park" with restaurants at its heart.

"We don't want brands in here," Romano said. "We want to create brands."

Desirable concepts are about 2,500 square feet in size, have a maximum investment of \$500,000 in finish out and project annual sales of \$1 million to \$1.5 million.

"We want everything in here to be organic, to be a new idea," Romano said. "We are trying to create restaurant concepts that are portable and can be multiple."

Rent is a flat 6 percent of sales, with an assessment for common area maintenance, taxes and insurance. Terms are five years with a five-year option and no personal guarantees.

"In exchange for a very favorable rent structure and possible financial assistance, WDI is interested in participating in ongoing success stories," the company said in overview documents. "We are encouraging potential tenants to raise their own capital, but we will enter discussion for alternative financing options if the opportunity is a right 'fit' for Trinity Groves."

The brain trust

Romano has put together an advisory panel of experienced chefs and restaurateurs to vet candidates for the Trinity Groves incubator, including Drew Nieporent of Myriad Restaurant Group, Jeff Sinelli of Which Wich, and such local chefs and operators as Stephan Pyles, Kent Rathbun, Joseph Palladino and Nick Badovinus.

Mark Brzezinski, who helped develop and was a franchisee of the Pei Wei Asian Diner chain, is also on the advisory panel.

"We have way more demand than supply," Brzezinski said during an interview at the Trinity Grove offices. "What we're doing now is trying to filter the people that we think will be the most successful. A lot of developers don't care if you are successful or not. We want them to be long term and be a benefit to other businesses in the area."

Brzezinski said the advisory committee has rejected some applicants, saying, "We like your passion and your energy and your desire to do it, but we just don't see that working in Trinity Groves."

Still, Romano emphasized that some Trinity Groves participants would be first-time owners.

"They have talent, and we support their weaknesses," he said.

If an incubated concept expands beyond Trinity Groves, the advisory committee gets a 10-percent stake, Romano said, so the members are doing extensive due diligence.

In addition, WDI is creating a fund to finance those who have great ideas but no ready access to working capital.

"We're creating an entrepreneurial fund for West Dallas with individual investors," Romano said. "We also go to our vendors and equipment people. If it works, they are locked into a pipeline."

If the fund puts money into the idea, the fund owns 50 percent of the concept. The consulting group owns 10 percent if it grows.

"The entrepreneur can own 40 percent of the thing, or all if he puts in all his own money," Romano said.

"We're looking for diversity in food: Italian, French, Asian, Mexican, Lebanese," he said. "We're going from hand food to casual dining to maybe a fancy place. These will be owner operated, so it will be diversity in ownership. The main thing is to give opportunity to younger people with great ideas."

Soon to hatch

The first incubated restaurant will be Babb Brothers Barbeque & Blues, which will open in early fall. Four Corners Brewing Co. will be opening within weeks, and Sharon Von Meter of SVM Productions will also open in early fall a 10,000-square-foot culinary art center and cooking school.

Romano also is planning to open a Hofmann's World's Greatest Hot Dogs restaurant, based on the sausage made in Syracuse, N.Y., most likely by October. And he hinted at a television reality show that may be involved in some of the restaurant creation.

"It's going to be an evolution, not a revolution," Romano said. "By the end of summer, we'll have three or four restaurants open here or close to opening. After that it might be three or four a month to open up."

He added that the incubator has the luxury of letting an unsuccessful concept go dark for a few months and come around again as another eatery.

Another benefit is its proximity to a local community college culinary program.

"We've got an affiliation with the chefs school at El Centro community college, and they can use this for their internships," Romano said.

And restaurants are only part of the development push.

"You can't expect people to come out to eat and then go home, so we have the Black Box Theater and a jazz club," he said. "We want to have a fish market and a meat market and flower shop, book stores and an outdoor concert area."

While Romano admitted his investment company's 75 acres, which has the option to grow to 100, will eventually be worth "a heckuva lot of money," the inventory of land is a "new frontier" for restaurant ideas and a chance for him to add personal intrinsic value.

"It makes me feel good to ... give them an opportunity to achieve their dreams," he said.

Contact Ron Ruggless at ronald.ruggless@penton.com.

Follow him on Twitter: [@RonRuggless](https://twitter.com/RonRuggless).

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City of Dallas

APPLICATION/APEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 112-100

Data Relative to Subject Property:

Date: 8-24-12

Location address: 330 Bedford Street Zoning District: IR

Lot No.: 5, 6, 7 and 8 (less ROW) Block No.: 7087 Acreage: 0.483 Census Tract: 43.00

Street Frontage (in Feet): 1) 200.0 2) 112.88 3) 151.7 4) 129.9 5) _____

SW 19

To the Honorable Board of Adjustment :

Owner of Property/or Principal: West Dallas Investments, L.P.

Applicant: Jackson Walker L.L.P. / Jonathan G. Vinson Telephone: 214-953-5941

Mailing Address: 901 Main Street, Suite 6000, Dallas, Texas Zip Code: 75202

Represented by: Jackson Walker L.L.P. / Jonathan G. Vinson Telephone: 214-953-5941

Mailing Address: 901 Main Street, Suite 6000, Dallas, Texas Zip Code: 75202

Affirm that a request has been made for a Variance X, or Special Exception _____, of to the minimum front yard setback regulations of the Dallas Development Code, to permit construction and maintenance of a structure extending 8 feet into the required front yard on Pastor Street. JGV 8/24/12

Application is now made to the Honorable Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described request for the following reason:

The variance should be granted because it is not contrary to the public interest; owing to special conditions, literal enforcement of Chapter 51A would result in unnecessary hardship; and the variance is necessary to permit development commensurate with development upon other parcels with the same zoning, all of which will be documented further in additional materials to be provided to the City Staff.

Note to Applicant: If the relief requested in this application is granted by the Board of Adjustment, said permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

Respectfully submitted: Jackson Walker L.L.P.
By: Jonathan G. Vinson
Applicant's name printed

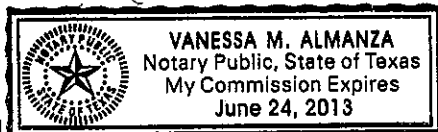
Jonathan G. Vinson
Applicant's signature

Affidavit

Before me the undersigned on this day personally appeared Jonathan G. Vinson who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

Subscribed and sworn to before me this 24th day of August, 2012

Jonathan G. Vinson
Affiant (Applicant's signature)
Vanessa M. Almanza



MEMORANDUM OF
ACTION TAKEN BY THE
BOARD OF ADJUSTMENT

Date of Hearing _____

Appeal was--Granted OR Denied

Remarks _____

Chairman

Building Official's Report

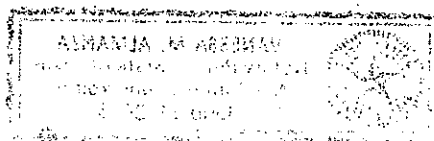
I hereby certify that Jonathan Vinson

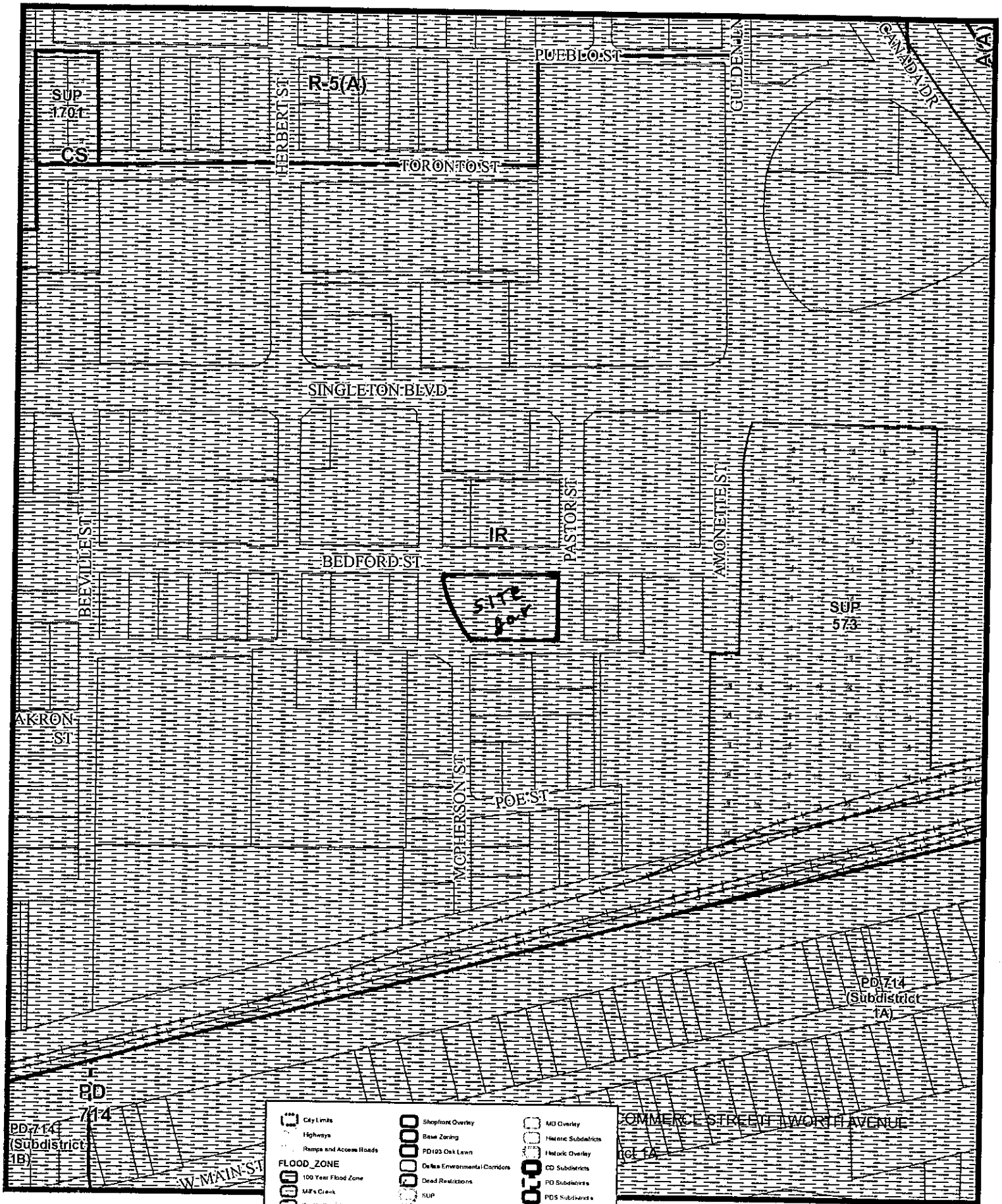
did submit a request for a variance to the front yard setback regulation
at 330 Bedford Street

BDA112-100. Application of Jonathan Vinson for a variance to the front yard setback regulation at 330 Bedford Street. This property is more fully described as a building site or lots 5, 6, 7, & 8 in city block 7087 and is zoned IR, which requires a front yard setback of 15 feet. The applicant proposes to construct and maintain a nonresidential structure and provide a 10 foot front yard setback, which will require a 5 foot variance to the front yard setback regulation.

Sincerely,


Lloyd Denman, Building Official

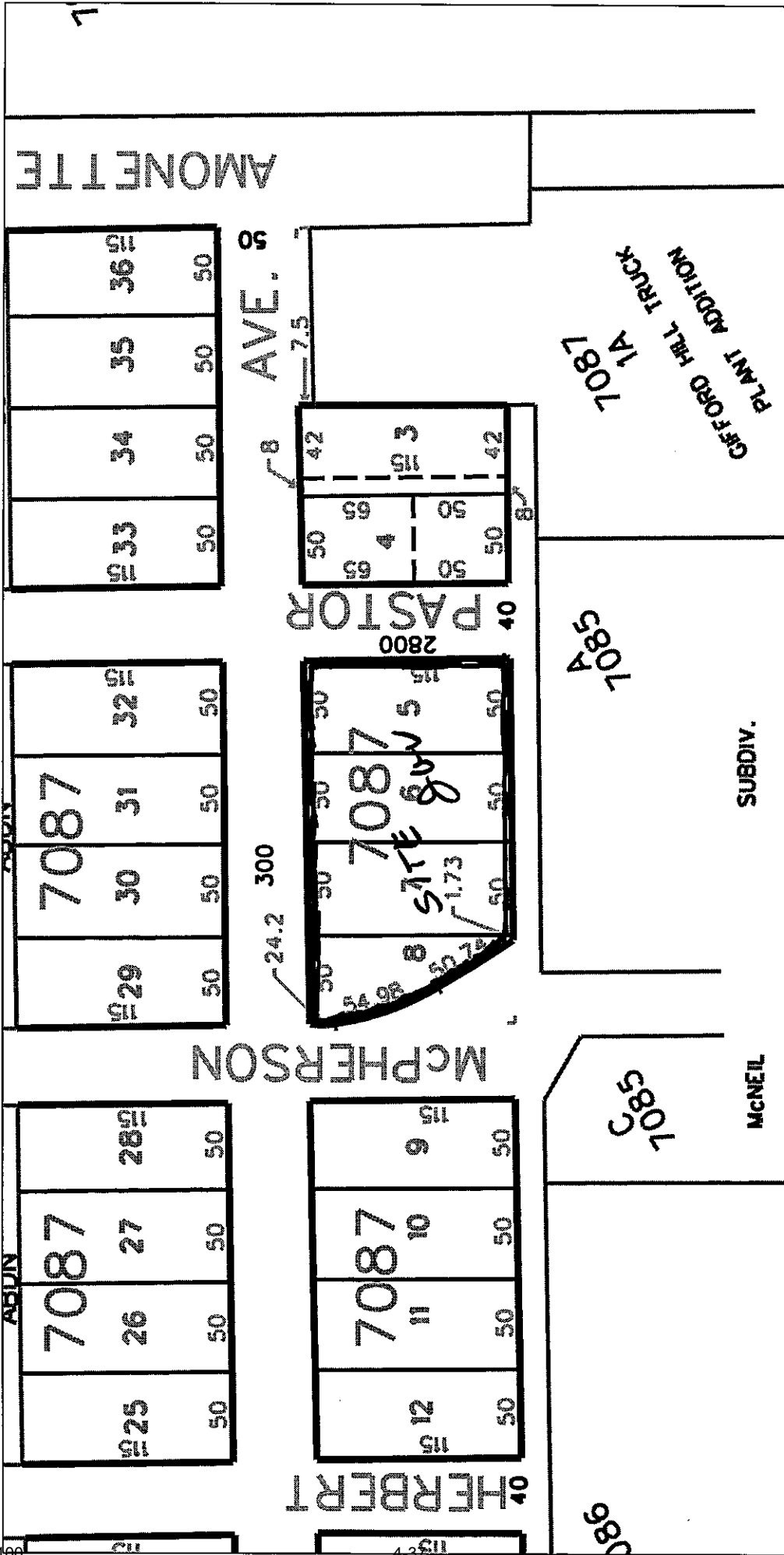




	City Limits		Shopfront Overlay		MO Overlay
	Highways		Base Zoning		Historic Subdistricts
	Ramps and Access Roads		PD103 Oak Lawn		Historic Overlay
	FLOOD_ZONE		Delus Environmental Corridors		CD Subdistricts
	100 Year Flood Zone		Dead Restrictions		PO Subdistricts
	M's Creek		SLIP		PDS Subdistricts
	Park's Branch		D		NSD Subdistricts
	X PROTECTED BY LEVEL		D-1		ISO Overlay
	Parks		CP		Equipment Overlay
	Height Map Overlay		SP		
	Parking Management Overlay				

COMMERCE STREET NORTH AVENUE
 101 1A

Case ID:
 Printed: 8/23/2012



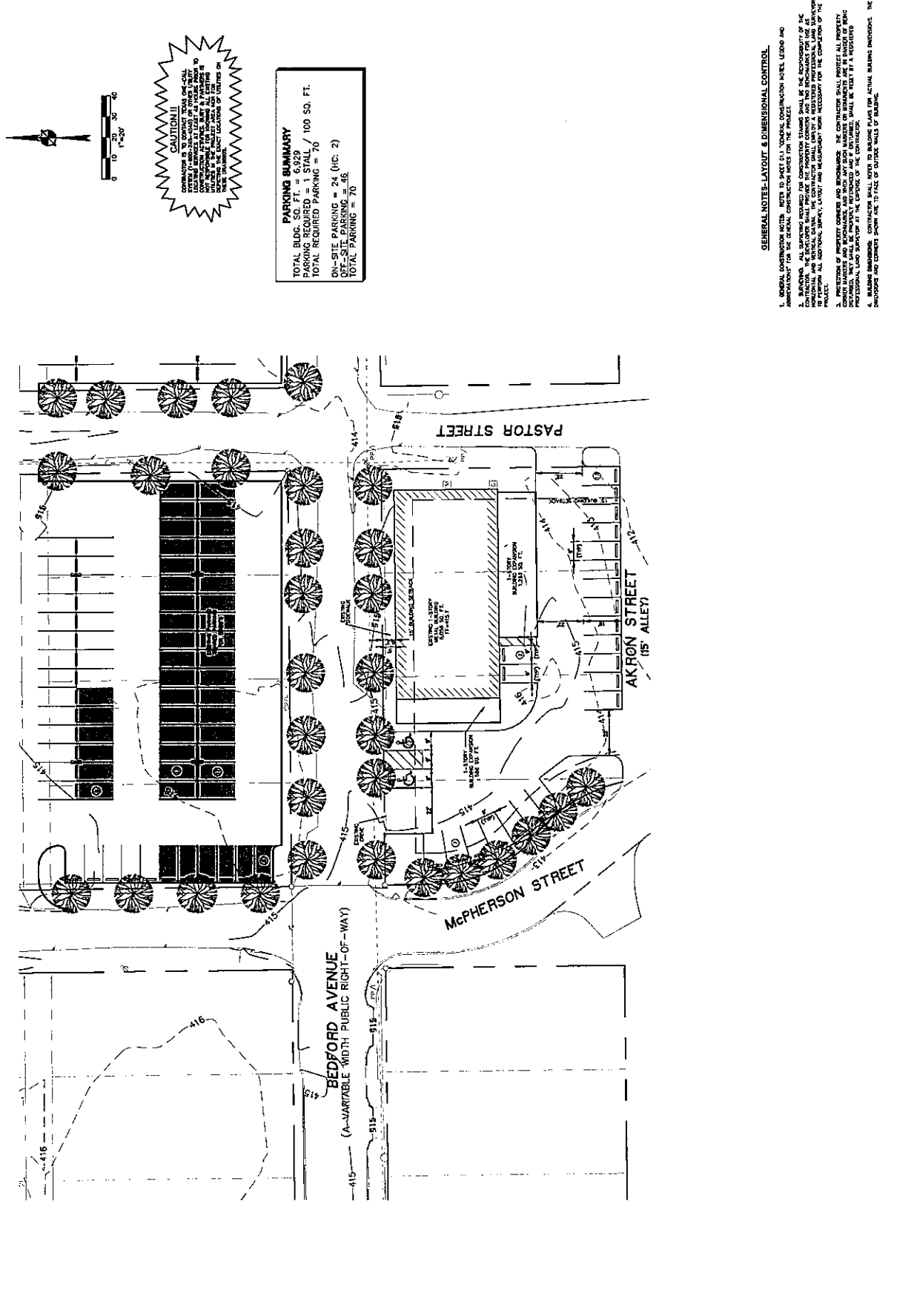
Project No.	0110291-3001
Plan Title	WEST DALLAS / TRINITY GROVES
Checked By	WLP
Drawn By	WLP
Designed By	WLP
Scale	1"=20'
Date	08-14-12

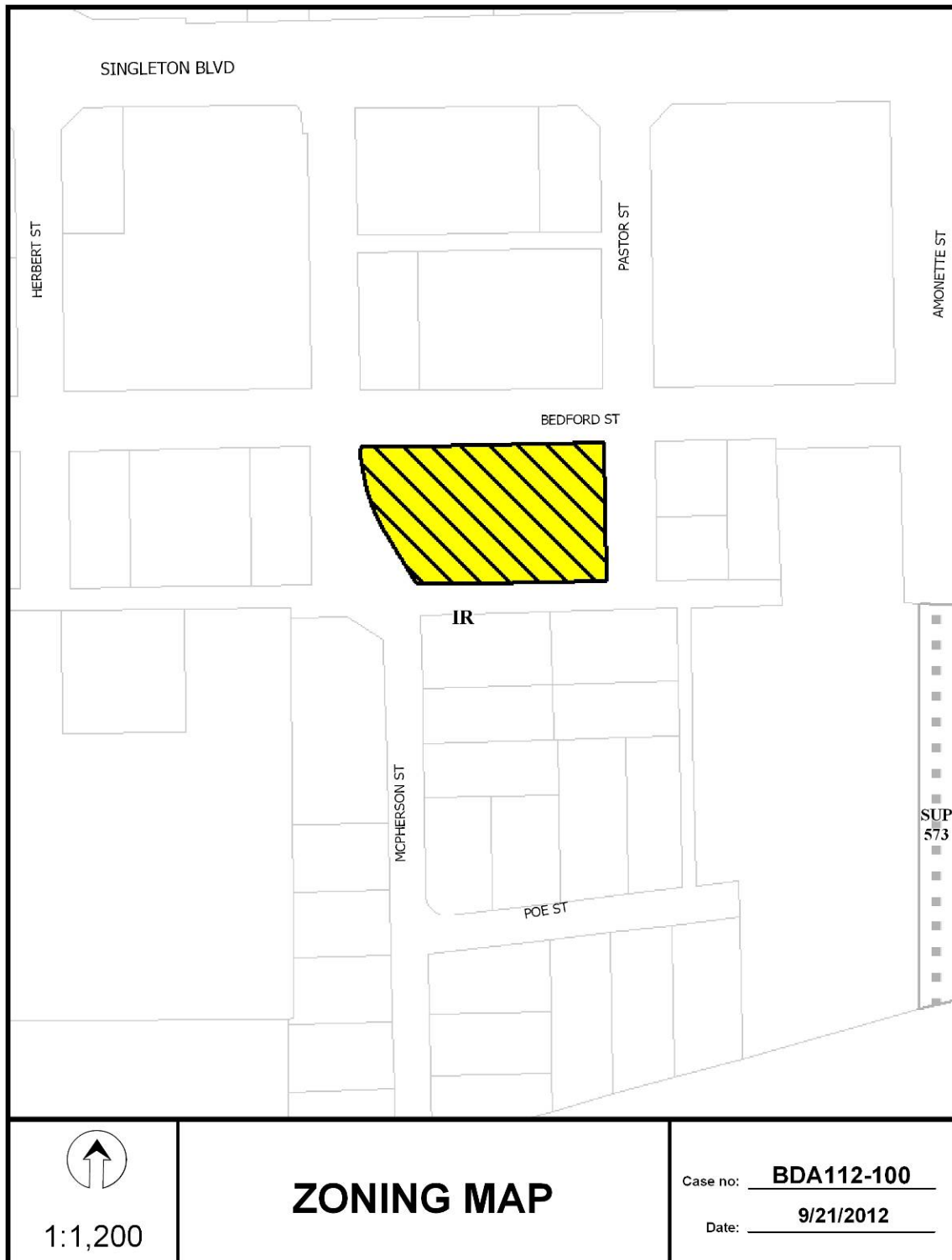
SHEET
C2.1

WEST DALLAS / TRINITY GROVES
LAYOUT AND DIMENSIONAL CONTROL PLAN

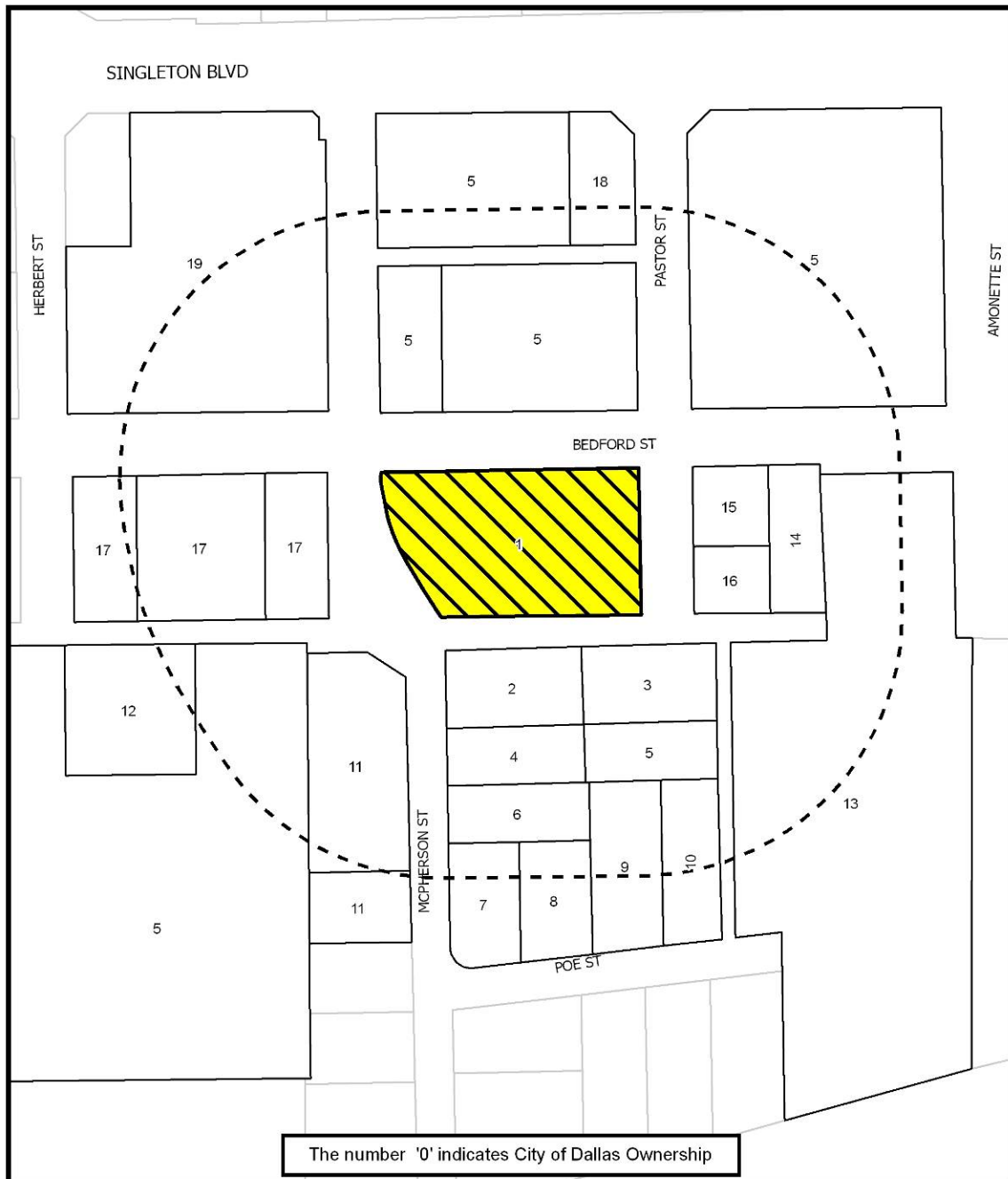
PRELIMINARY FOR REVIEW ONLY
ALL DIMENSIONS IN THIS PLAN ARE APPROXIMATE
FOR THE CONSTRUCTION OF THIS PROJECT
THE CONTRACTOR SHALL VERIFY ALL DIMENSIONS
ON THE GROUND AND SHALL BE RESPONSIBLE FOR ANY
ADJUSTMENTS NECESSARY FOR THE COMPLETION OF THE
PROJECT.

P Buy+Partners
5125 TRINITY BND SUITE 100
DALLAS, TEXAS 75206
PH: (214) 343-1234
WWW.BUYANDPARTNERS.COM









 1:1,200	<h2>NOTIFICATION</h2>	Case no: BDA112-100
	<div style="display: flex; justify-content: space-between;"> <div style="border: 1px solid black; padding: 2px;">200'</div> <div>AREA OF NOTIFICATION</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="border: 1px solid black; padding: 2px;">19</div> <div>NUMBER OF PROPERTY OWNERS NOTIFIED</div> </div>	Date: 9/21/2012

Notification List of Property Owners

BDA112-100

19 Property Owners Notified

<i>Label #</i>	<i>Address</i>	<i>Owner</i>
1	330 BEDFORD ST	WEST DALLAS INVESTMENT LP % LARRY MCGREG
2	2732 MCPHERSON ST	WEST DALLAS INVESTMENTS L
3	2900 PASTOR ST	WEST DALLAS INVESTMENTS LP
4	2728 MCPHERSON ST	MORALES ALVINO
5	2900 MCPHERSON ST	WEST DALLAS INV LP
6	2724 MCPHERSON ST	ESTRADA ANDRES JR
7	2720 MCPHERSON ST	ALONZO ERNESTO
8	327 POE ST	CAVAZOS GUADALUPE B & ET AL
9	323 POE ST	MARTINEZ JUANITA
10	319 POE ST	MARTINEZ JUANITA
11	2731 MCPHERSON ST	2731 MCPROPERTIES CORP
12	2800 HERBERT ST	COMMERCE PROPERTIES WEST LC
13	302 BEDFORD ST	CORNERSTONE C & M INC % PROPERTY TAX DEP
14	308 BEDFORD ST	GARCIA JUAN ALMARAZ
15	312 BEDFORD ST	RIOS GUADALUPE TR
16	2802 PASTOR ST	WEST DALLAS INVESTMENTS
17	342 BEDFORD ST	WEST DALLAS INV L P
18	322 SINGLETON BLVD	WEST DALLAS INVESTMENTS LP
19	340 SINGLETON BLVD	WEST DALLAS INVESTMENTS LP

FILE NUMBER: BDA 101-068

BUILDING OFFICIAL'S REPORT:

Application of Tommy Mann of Winstead, PC, to appeal the decision of the administrative official at 1809 Rock Island Street. This property is more fully described as Lot 15 and part of Lot 16 in City Block 73/7342 and is zoned PD-784, which requires that the building official revoke a certificate of occupancy if the building official determines that the certificate of occupancy was issued on the basis of false, incomplete, or incorrect information; the use is being operated in violation of the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations. The applicant proposes to appeal the decision of an administrative official in the revocation of a certificate of occupancy.

LOCATION: 1809 Rock Island Street.

APPLICANT: Tommy Mann of Winstead, PC

REQUEST:

An appeal has been made requesting that the Board of Adjustment reverse/overturn the Building Official's May 18, 2011 decision (received by the applicant according to the board of adjustment application on May 20, 2011) to revoke the existing certificate of occupancy for the property.

STANDARD FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:

Dallas Development Code Sections 51A-3.102(d)(1) and 51A-4.703(a)(2) states that any aggrieved person may appeal a decision of an administrative official when that decision concerns issues within the jurisdiction of the Board of Adjustment.

The Board of Adjustment may hear and decide an appeal that alleges error in a decision made by an administrative official. Tex. Local Gov't Code Section 211.009(a)(1).

Administrative official means that person within a city department having the final decision-making authority within the department relative to the zoning enforcement issue. Dallas Development Code Section 51A-4.703(a)(2).

BACKGROUND INFORMATION:

Zoning:

Site: PD 784 (Planned Development)

North: PD 784 (Planned Development)

South: PD 784 (Planned Development)
East: PD 784 (Planned Development)
West: PD 784 (Planned Development)

Land Use:

The subject site is developed with a petroleum product and wholesale use (Buckley Oil). The areas to the north and east appear to be developed with industrial/warehouse use; and the areas to the south and west appear to be undeveloped.

Zoning/BDA History:

1. BDA 101-069, Property at 1809 Rock Island Street (the subject site) On August 14, 2012, the Board of Adjustment Panel A conducted a hearing to consider an appeal made requesting that the Board of Adjustment reverse/overturn the Building Official's May 18, 2011 decision (received by the applicant according to the board of adjustment application on May 20, 2011) to deny an application for a certificate of occupancy. The Board held this application under advisement until October 16, 2012.

2. BDA 101-070, Property at 1803 Rock Island Street (the property immediately north of the subject site) On August 14, 2012, the Board of Adjustment Panel A conducted a hearing to consider an appeal made requesting that the Board of Adjustment reverse/overturn the Building Official's May 18, 2011 decision (received by the applicant according to the board of adjustment application on May 20, 2011) to deny an application for a new certificate of occupancy. The Board held this application under advisement until October 16, 2012.

Timeline:

- June 3, 2011: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- June 22, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

- June 23, 2011: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the August 1st deadline to submit additional evidence for staff to factor into their analysis; and the August 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the outline of procedure for appeals from decisions of the building official to the board of adjustment; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- July 28, 2011: The applicant requested postponement of the application from Panel A's August 16th hearing to Panel A's September 20th hearing.
- August 11, 2011: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the September 1st deadline to submit additional evidence for staff to factor into their analysis; and the September 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the outline of procedure for appeals from decisions of the building official to the board of adjustment; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- August 25, 2011: The applicant requested postponement of the application from Panel A's September 20th hearing to Panel A's October 18th hearing.
- September 26, 2011: The applicant requested postponement of the application from Panel A's October 18th hearing to Panel A's November 15th hearing.
- October 28, 2011: The applicant requested postponement of the application from Panel A's November 15th hearing to Panel A's January 17, 2012 hearing.
- December 17, 2011: The applicant requested postponement of the application from Panel A's January 17, 2012 hearing to Panel A's February 14, 2012 hearing.
- December 20, 2011: Application was postponed indefinitely.
- June 22, 2012: The applicant indicated that he was ready to proceed with this request.

- June 22, 2012: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the August 3rd deadline to submit additional evidence to be incorporated into the Board's docket materials; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- July 31, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, and the Assistant City Attorneys to the Board.
- August 3, 2012: The Assistant City Attorney assisting the Building Official on this application forwarded additional information to staff.
- August 3, 2012: The applicant forwarded additional information on this application to staff.
- August 14, 2012: The Board of Adjustment Panel A conducted a hearing to consider an appeal made requesting that the Board of Adjustment reverse/overtake the Building Official's May 18, 2011 decision (received by the applicant according to the board of adjustment application on May 20, 2011) to revoke the existing certificate of occupancy for the property.

The following written documents were submitted at the August 14, 2012 briefing/public hearing in conjunction with BDA 101-068, BDA 101-069, and BDA 101-070:

1. The Assistant City Attorney assisting the Building Official submitted a document that included among other things a "summary of issues under consideration" (see Attachment A).
2. The Assistant City Attorney assisting the Building Official submitted a copy of a Certificate of Occupancy for property located at 1809 Rock Island Street dated 11/16/2001" (see Attachment C).
3. The Assistant City Attorney assisting the Board of Adjustment submitted copies of portions of Section 306 of Chapter 52 of the Dallas City Code (see Attachment B).
4. The applicant submitted a document entitled "Linda Henry Testimony" (see Attachment D).
5. The applicant submitted a document entitled "Olen Ray Long Testimony" (see Attachment E).

The Assistant City Attorney assisting the Building Official and the applicant submitted paper copies of their power point show presented at the August 14th hearing. Copies of these power point shows have been placed in the case files and are available for review upon request.

The Board held this application under advisement until October 16, 2012.

August 21, 2012: The Board Administrator wrote the applicant a letter that conveyed the board's action on this appeal and the October 5th deadline to submit any additional information that he would want to be incorporated into the board's October docket.

October 2, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Building Inspection Senior Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

October 5, 2012: The applicant forwarded additional information on this application and BDA 101-069 and BDA 101-070 to staff (see Attachment F).

GENERAL FACTS/STAFF ANALYSIS:

- The Building Official's May 18, 2011 letter to Arthur Anderson of Winstead, P.C. regarding "Revocation of certificate of occupancy no. 0110101005 ("the CO") for a petroleum product storage and wholesale use at 1809 Rock Island Street ("the Property") owned by Buckley Oil Company ("Buckley Oil)" is included in this case report. The letter states among other things that:
 - 1) The CO for a petroleum product storage and wholesale use on the Property is hereby revoked and any use operating on the Property without a certificate of occupancy is an illegal land use that must immediately cease operating.
 - 2) The building official shall revoke a certificate of occupancy if the building official determines that a use or occupancy is being operated in a manner that is a substantial danger of injury or an adverse health impact to any person or property and is in violation of the codes.
 - 3) The Fire Department has determined that because of the many Dallas Fire and Construction Code violations on the Property (described in this letter), the use or occupancy is being operated in a manner that is of substantial danger of injury or adverse health impact to persons and property.

- On August 3, 2012, Assistant City Attorney Andrew M. Gilbert who is assisting the Building Official submitted a notebook of information (and disc) entitled “Appeal to Board of Adjustment RE: BDA 101-068, 101-069, & 101-070, Properties Located at 1803, 1809, and 1811 Rock Island St. City of Dallas’ Exhibits 1 through 43.” (A cover memo attached stated that “by copy of this letter, a copy of same is being delivered to counsel of record.” In addition, discs of this information were mailed to the board members and a copy of the notebook was hand-delivered to the Assistant City Attorney to the Board of Adjustment).
- On August 3, 2012, Arthur J. Anderson of Winstead (the applicant) submitted information related to BDA 101—068, 069, and 070. (Discs of this information were mailed to the board members and mailed and/or hand-delivered to the Assistant City Attorney assisting the Building Official and the Assistant City Attorney to the Board of Adjustment).
- If the Board of Adjustment upholds the Building Official’s May 18, 2011 decision, certificate of occupancy # 0110101005 on the property located at 1809 Rock Island Street will remain revoked.
- If the Board of Adjustment overturns/reverses the Building Official’s May 18, 2011 decision, certificate of occupancy # 0110101005 on the property located at 1809 Rock Island Street will be reinstated.

BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2012

APPEARING IN FAVOR: Art Anderson, 1201 Elm St., Dallas, TX

APPEARING IN OPPOSITION: No one

APPEARING FOR THE CITY: Andrew Gilbert, CAO, 1500 Marilla, 5DN, Dallas, TX

MOTION #1: Hounsel

I move that the Board of Adjustment in Appeal No. **BDA 101-068** suspend the rules and accept the evidence that is being presented today by the applicant.

SECONDED: Schweitzer

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #2: Agnich

I move that the Board of Adjustment in Appeal No. **BDA 101-068** suspend the rules and accept the evidence that is being presented today by the city.

SECONDED: Hounsel

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #3: **Nolen**

I move that the Board of Adjustment in Appeal No. **BDA 101-068** suspend the rules and accept the evidence that is being presented today by the city.

SECONDED: **Agnich**

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

Break: 2:07 P.M.

Resumed: 2:17 P.M.

MOTION#4: **Schweitzer**

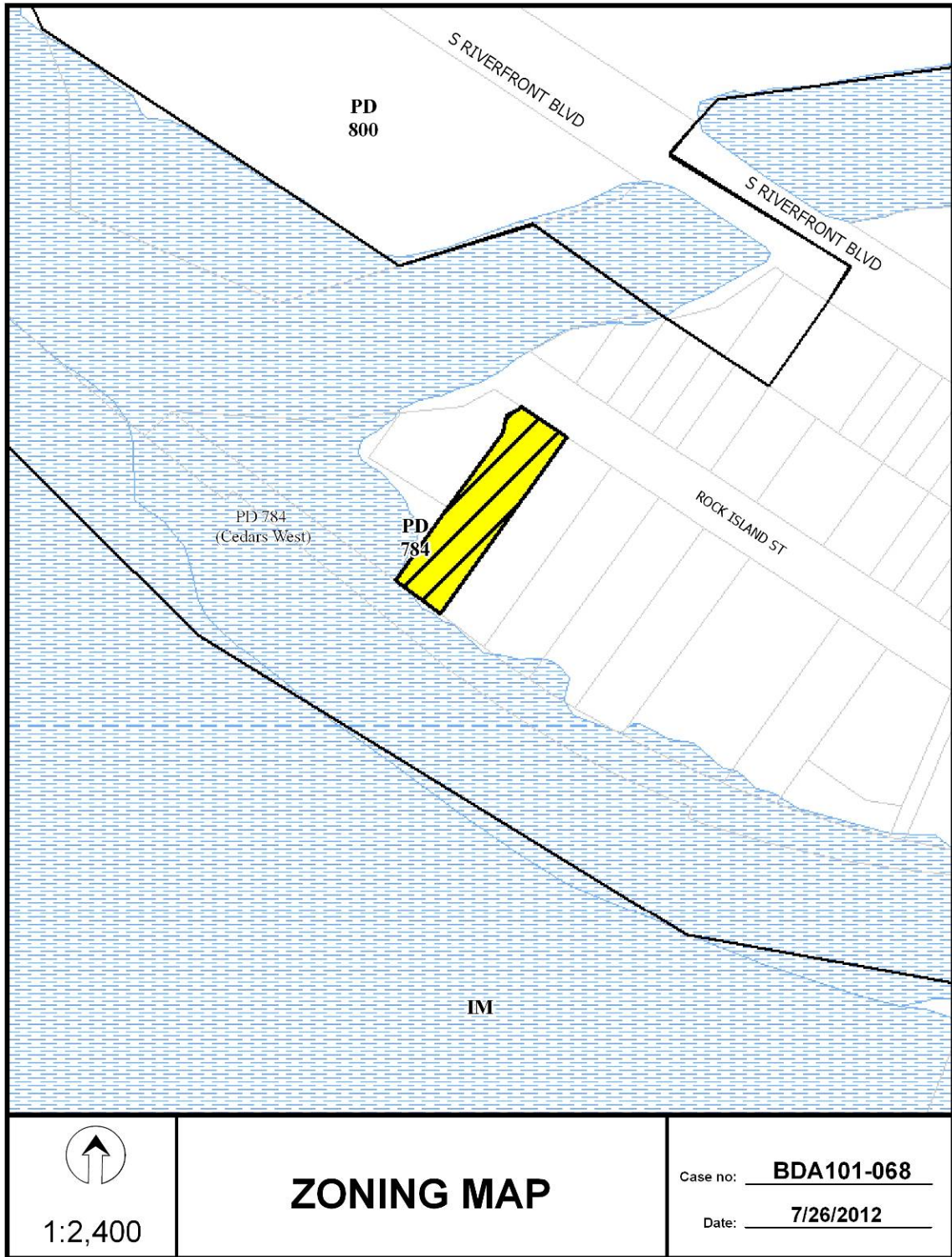
I move that the Board of Adjustment in Appeal No. **BDA 101-068**, hold this matter under advisement until **October 16, 2012**.

SECONDED: **Agnich**

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

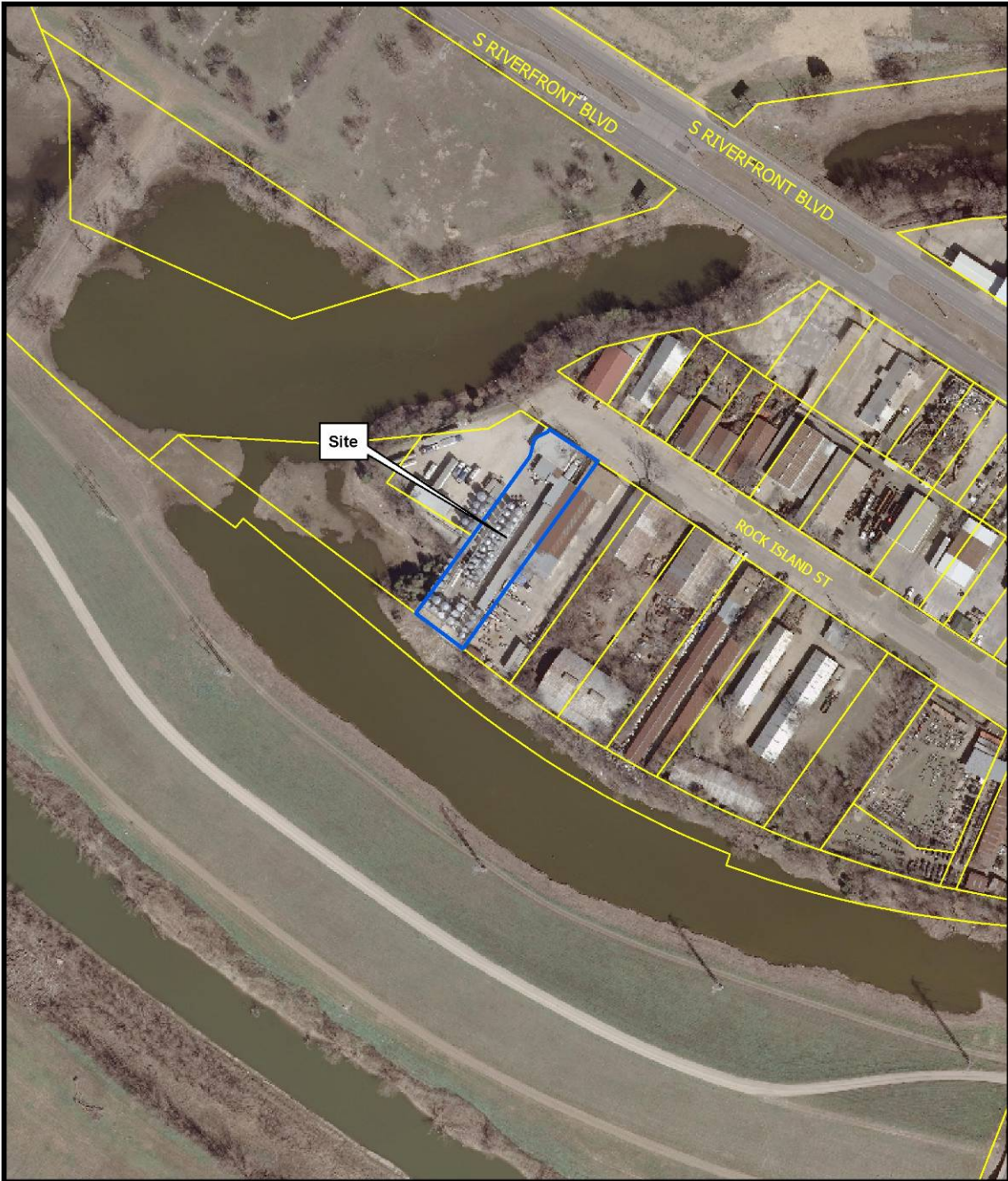


1:2,400

ZONING MAP

Case no: BDA101-068

Date: 7/26/2012



1:2,400

AERIAL MAP

Case no: BDA101-068

Date: 7/26/2012



~~BDA~~ BDA 101-068, 069, 070
Submitted by
Andrew Gilbert
at the 8-14-12
briefing SK

8-14-12

August 14, 2012

City of Dallas Board of Adjustment, Panel A
1500 Marilla, 5BN
Dallas, Texas 75201

Via Hand-Delivery

Attach A
pg 1

RE: Properties at 1803 and 1809 Rock Island Street (the "Properties") owned by Buckley Oil Company ("Buckley"); BDA 101-068, 101-069, and 101-070

Dear Panel Members:

This letter responds to the letter sent to you by Art Anderson on August 3, 2012. Buckley's Properties have multiple serious violations of the Dallas City Code. The Dallas Fire Department has determined the Properties present a substantial danger of injury to the public. There are no permits for the vast number of storage tanks for flammable and combustible liquids installed on the Properties since 1957, and for other hazardous operations. The City's Exhibit 30 is the only approved permit for above-ground storage tanks on the Properties, and it authorizes the 21 tanks that were installed in 1957.¹ By comparing the City's Exhibits 1-12, the Board can see that the number of tanks at the Properties has almost quadrupled in the years since 1957. Specifically, by comparing the City's Exhibits 2, 4, and 12, the Board can see the number of tanks roughly double from 1962 to 1985, and double again from 1985 to 2011. Through the years, the City has attempted to work amicably with Buckley to achieve compliance with the Code, which would considerably reduce the dangers on the Properties. The efforts have been unsuccessful because Buckley does not wish to incur the expense of complying.

Summary of issues under consideration²

There are only two issues for the Board to consider: (1) did the building official properly deny Buckley's application #1008021063 and #1008021064 for a certificate of occupancy ("CO"); and (2) did the building official properly revoke CO #0110101005 (attached as Exhibit "A") for 1809 Rock Island. The City Code provides the building official shall deny a CO if a property owner does not comply with the codes,³ if the application contains false or incomplete information,⁴ or if the applicant does not possess a required city permit to operate the use.⁵ The City Code further provides the building official shall revoke a CO if Buckley's operation presents a substantial danger of injury or adverse health impact to any person or property and is in violation of the law.⁶ Anderson's letter wrongly states that the building official can *only*

¹ City's Exhibit 30

² The City agrees that Buckley has a CO for a warehouse use on 1811 Rock Island. There were no actions taken by the building official concerning 1811 Rock Island that are the subject of Buckley's appeal.

³ Dallas City Code, Chapter 52, § 306.5(1)

⁴ Dallas City Code, Chapter 52, § 306.5(3)

⁵ Dallas City Code, Chapter 52, § 306.5(4)

⁶ Dallas City Code, Chapter 52, § 306.13(3)

revoke if the facilities are a substantial danger. The City Code also provides the building official may revoke a CO if a required permit has not been issued, has been revoked, or expired.⁷

The building official properly denied the certificate of occupancy for 1803 Rock Island

There is no CO for 1803 Rock Island Street. Buckley’s misunderstanding has created confusion regarding the correct address for 1803 Rock Island. While Buckley may have purchased the Properties together, they are all separately platted with separate addresses and there is no dispute that 1803 is a separate property (or “tract”) requiring a separate CO. In fact, Buckley’s warranty deed shows the two tracts as separate lots. Buckley has never had a CO for any use for 1803 Rock Island.

Buckley alleges that there was a “clerical error” in failing to issue a CO for 1803 Rock Island when it applied for one at 1809 in 2001. There was no clerical error and Buckley’s time to appeal any determination from 2001 has expired.⁸ First, if Buckley applied using the wrong address, then it is not the City’s error. Second, no CO was ever issued for more than 21 tanks at 1809 Rock Island. Third, Buckley later applied for a CO for a petroleum product storage and wholesale use at 1803 Rock Island on March 17, 2008. Buckley did not request an inspection before the 120th day after the application was filed. The CO application for the petroleum product storage and wholesale use therefore expired and was void *ab initio*.⁹ The City did not make an error by not issuing a CO for 1803 Rock Island.

Buckley wrongly claims that it obtained a permit to construct seven tanks at 1803 in 2001. Buckley was preliminarily issued a permit to construct seven tanks at the location it described as 1809 Rock Island, with the note that the fire department must first approve and that Buckley must first obtain a CO. (COD 521) The tanks were placed on 1803 Rock Island without the Fire Department’s approval and without any CO. Buckley never requested any inspections, the City red-tagged the permit and it expired.

The building official properly revoked the certificate of occupancy for 1809 Rock Island

The building official properly revoked the CO for 1809 Rock Island (attached hereto as Exhibit “A”). The CO for 1809 Rock Island was updated to add the petroleum product storage and wholesale use with a note that only the original 21 storage tanks were permitted.¹⁰

Buckley fails to squarely address the issue of permits for its aboveground storage tanks. Buckley vaguely claims that “numerous tanks were installed in the 1957 timeframe.” Buckley’s owner R.E. Dodson, and paid consultant, Olen Long, have previously claimed that “**All tanks except seven were installed in 1957,**” when the photos of the Properties reveal otherwise. (City’s Exhibits 1-12)

Additionally, Buckley tries to blame the City for bad recordkeeping. The City believes its fire and building permit records for the Properties are complete, and that no documents are missing

⁷ Dallas City Code, Chapter 52, § 306.13(5)

⁸ Dallas City Code, Chapter 52, § 306.15

⁹ Dallas City Code, Chapter 52, § 306.4.2

¹⁰ See City’s Exhibit 16; City’s Exhibit 19, p. 12 (confirming the City has updated Buckley Oil’s certificate of occupancy)

or misplaced. Also, both the 1991 Fire Code and the 2006 Fire Code require Buckley Oil to maintain all permits.¹¹ Since the number of tanks at Buckley's properties has almost quadrupled since 1957, it defies logic that the City would have the oldest permit and not any newer permits. For Buckley to be correct, the City would have to "misplace" permits for approximately 60 tanks that have been installed, moved, and/or removed over the course of 55 years.

Buckley failed to provide requested information

Buckley refers to certain bases for revocation as "hypertechnical defect complaints." However, since Buckley failed to respond to the building official's request, the building official properly revoked the CO. Buckley contends that it provided all information on the City's CO checklist. However, the City Code provides the building official may request additional information.¹² Buckley's response was deficient.

Buckley Oil is in violation of the Fire Code at 1809 and 1803 Rock Island

If Buckley is violating the Fire Code, then the building official properly denied the CO applications for 1803 and 1809 Rock Island. Additionally, the building official properly revoked the CO for 1809 Rock Island if the Properties constitute a substantial danger to or required permits have not been issued. Chief Carlin's memo was not the only evidence of the violations or dangers.

As the record shows, the Properties have multiple serious violations of the Dallas Fire Code. In particular, failing to obtain a permit for storage, handling, or use of Class I, II, or IIIA liquids violates the Dallas Fire Code.¹³ In addition, failing to obtain acceptance tests for tanks being placed into service violates the Dallas Fire Code.¹⁴

There are many other violations of the Fire Code for which Buckley has been previously placed on notice.¹⁵ For example, the Fire Department has given numerous written notices to Buckley of fire code violations, including on January 10, 2003, January 17, 2003, April 15, 2003, August 31, 2007, January 7, 2009, February 19, 2009, and again on June 5, 2012.¹⁶ In addition, fire inspectors told Buckley about violations at other times. Before making any decisions at issue in this proceeding, the building official met with inspectors from the Fire Department on the dangers at the Properties. Considering the number, extent, and significance of all of the violations together, there is a substantial risk of injury on and near the Properties. *See also* City's Exhibit 29.

Buckley presents a substantial danger of injury to persons or property

The City's fire marshal and other fire inspectors have determined that Buckley presents a substantial danger of injury. Chief Carlin's memo is only one example. Buckley has the burden

¹¹ See 1991 Dallas Fire Code § 4.105; 2006 Dallas Fire Code § 107.2.1

¹² Dallas City Code, Chapter 52, § 306.3.1(5)

¹³ See Dallas Fire Code § 105.6.16

¹⁴ See Dallas Fire Code § 3404.2.12.1

¹⁵ See e.g. City's Exhibits 1-14, 19, 29, and 30-43

¹⁶ See Exhibits 29, 32-38

to show that the building official erred and that the Properties are in compliance.¹⁷ Buckley did not timely submit any direct evidence indicating that the facility is safe. Buckley claims that it does not present a substantial danger of injury. Yet, it only makes statements to the effect that “the City has presented no evidence,” and that “it must be presumed” that Buckley is safe because they have been operating “without incident” and have “received numerous permits.”

The City has not determined that Buckley’s Properties are safe. Inspections conducted by various city departments or other governmental agencies do not “condone” or “approve” of the condition of the Properties. Many of these inspections were conducted for reasons not mentioned by Buckley. For example, EPA and TCEQ do not inspect to verify compliance with the Fire Code or for permits. Also, the fact that Buckley might not have ever received a citation is no evidence that the Properties comply. Finally, all persons having dealings with a city are presumed to know its ordinances and are charged with notice of ordinance requirements.¹⁸

A. Buckley has unpermitted tanks containing flammable and combustible liquids.

Buckley says there is confusion regarding the City’s perception of the land areas identified by the addresses of 1803 and 1809 Rock Island, but fails to explain the significance. As Buckley should know, there is no confusion that it has unpermitted tanks and operations on both 1809 and 1803 Rock Island. (COD 458) Part of Buckley’s confusion appears to be due to it’s mistaken belief that 1803 Rock Island did not have a separate address from 1809 Rock Island.

By obtaining Building Permit No. 67069 dated March 27, 1957, Buckley Oil obtained a permit to install at most 21 storage tanks at 1809 Rock Island Street. Buckley states that it was not required to obtain permits for tanks that would not contain flammable liquids. First, Buckley *was* required to obtain permits for the other tanks that may have been installed in 1957. The 1951 Dallas Building Code required a building permit for *any* structure, including a storage tank. *See* 1951 Dallas Building Code § 201(A). Moreover, Buckley cannot show that all the additional tanks were installed in 1957, when they were clearly not.

Second, the Dallas Fire Code explicitly provides that the City can apply the Fire Code retroactively if the fire marshal determines that the existing structures, facilities, and conditions constitute a distinct hazard to life or property. *See* Dallas Fire Code § 102.1(4). Courts have also consistently held that fire code regulations can be applied retroactively.¹⁹

B. Buckley’s tanks are too close to each other inside inadequate diking.

Buckley says that its diking is sufficient to contain a spill. Even assuming that the tanks were all installed in 1957, the tanks are not spaced three feet from each other, as was required in 1957. However, the number of tanks has nearly quadrupled since 1957. The tanks are not spaced appropriately and some tanks have no clearance at all. Buckley’s consultant, Olen Long, submitted a diking plan to the City which was rejected because the design was flawed. (City’s Exhibits 32, 33, 40)

¹⁷ Dallas City Code, Chapter. 52, §306.15

¹⁸ *See, e.g., Board of Adjustment of City of San Antonio v. Nelson*, 577 S.W.2d 783, 786 (Tex. Civ. App.—San Antonio 1979, writ ref’d n.r.e)

¹⁹ *Queenside Hills Realty Co., Inc. v. SACL*, 328 U.S. 80 (1946); *Pierce Oil Corporation v. City of Hope*, 248 U.S. 498 (1919); *Crazy Water Retirement Hotel v. State of Texas*, 54 S.W.3d 100 (Tex. App.—Eastland 2001, no pet.).

C. Buckley stores Class I and II liquids together in the same diked area.

Buckley states that it is not storing incompatible liquids in the same diked area. Class I and II liquids are being stored too closely in the same diked area.²⁰ Incompatible liquids cannot be stored together in the same, unapproved, diked area.²¹ The National Board of Fire Underwriters Standards cited by Buckley is a document that may have discussed fire safety standards in 1941. The number of tanks at the Properties has nearly quadrupled since the first tanks were installed in 1957.

D. Buckley has not provided a foam fire extinguishing system or equipment on the Properties.

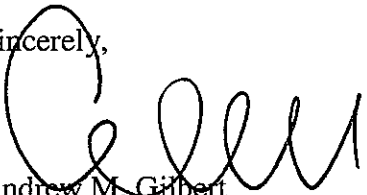
Buckley admits it is in violation of the Fire Code by not having a foam fire extinguishing system. The Fire Code requires Buckley to provide and maintain foam fire protection for aboveground storage tanks that are less than 50 feet apart.²²

E. A fire at the Properties would likely be devastating.

The Dallas Fire Department remains concerned that, as a result of the storage tanks being too close to each other, if an accident occurred on the Properties, the vast majority of the tanks could explode, burn for days cause significant damage to the Properties, could result in the loss of life, and other damage. The fact that an arts festival took place in the area directly contradicts Buckley's claim that it is located in an isolated, heavy industrial area with very few people nearby. Buckley is located in a very populated area, near to other establishments that are open to the public.

The City requests that the Board sustain the decision of the building official and affirm the denial and revocation of the COs for 1803 and 1809 Rock Island Street.

Sincerely,



Andrew M. Gilbert
Senior Assistant City Attorney

Cc:

Via Hand-Delivery
Arthur J. Anderson
5400 Renaissance Tower
Dallas, Texas 75270

²⁰Dallas Fire Code § 3404.2.9.5.2

²¹Dallas Fire Code § 2703.9.8

²²Dallas Fire Code § 3404.2.9.1.1

SDA 101-068, 069, 070
Submitted by Bert
Vandenberg at the
8-14-12 briefing.
SAT

Attch B
P 91

304.9.2 Final. To be made after structure is completed. To pass final inspection, all zones of the system must comply with the submitted irrigation design and must comply with current code and local and state water conservation requirements. Building inspection must also be provided with a receipt of the required test report for the installed backflow prevention device. (Ord. 27107)

304.10 Other inspections. In addition to the called inspections specified in this section, the building official may make or require any other inspection of any construction work to ascertain compliance with the codes and other applicable city ordinances. (Ord. 26029; 27107)

304.11 Reinspection. For the purpose of determining compliance with Section 104.6, the building official may cause any structure to be reinspected. (Ord. 26029; 27107)

304.12 Periodic inspections. Where the concealment of work proceeds continuously, the building official shall schedule periodic inspections. (Ord. 26029; 27107)

SECTION 305 SPECIAL INSPECTIONS

305.1 General. Refer to Section 1704 of the *Dallas Building Code*, as amended. (Ord. 26029)

SECTION 306 CERTIFICATE OF OCCUPANCY

306.1 Use or occupancy. No structure or land shall be used or occupied, no change in the existing occupancy classification, zoning use, or the tenant or occupant of a structure or portion of a structure shall be made, and no floor area increases or decreases of any existing tenancy area of a structure shall be used or occupied, until the building official has issued a certificate of occupancy and a fee has been paid as required in Section 303 of this chapter.

Exception: No certificate of occupancy is required for single family uses, handicapped group dwelling unit uses, duplex uses, U occupancies accessory to single-family or duplex uses, and tenant changes to individual dwelling units in Group R, Division 2 apartment houses. (Ord. 26029; 26579; 27107)

306.2 Change in use or occupancy. A change in the character, use, or occupancy of a building shall not be made except as specified in Chapter 34 of the *Dallas Building Code*. (Ord. 26029; 26579)

306.3 Application for a certificate of occupancy.

306.3.1 Application requirements. A person seeking a certificate of occupancy shall submit an application to the building official on a form approved by the building official. The application must include the following information:

1. The name and address of the use or occupancy.

2. The name, address, and telephone number of the owner of the structure and land.
3. The name, address, and telephone number of the operator of the use or occupancy.
4. A description of the use or occupancy that will be operated.
5. Any other information, plans, diagrams, computations, specifications, or other data or supporting documents the building official deems necessary, including an affidavit containing a detailed description of the use or occupancy that will be operated, the goods or services offered or produced, the hours of operation, and whether a city, county, state, or federal license, permit, or registration is required to operate the use or occupancy. (Ord. 26579)

306.3.2 Establishment selling or serving alcoholic beverages. Any person applying for a certificate of occupancy for an establishment that will sell or serve alcoholic beverages as defined in the *Texas Alcoholic Beverage Code* shall file an affidavit with the building official stating whether the establishment that will derive less than 50 percent, 50 percent or more, or 75 percent or more of its gross quarterly (three-month) revenue from the sale or service of alcoholic beverages for on-premise consumption. Any person owning or operating an establishment that sells or serves alcoholic beverages shall, upon request, supply the building official, within 30 days of the date of the request, with all records needed to document the percentage of gross revenue on a quarterly (three-month) basis derived from the sale or service of alcoholic beverages, including all sales tax returns for the period filed with the Texas Comptroller of Public Accounts and all applications for a permit or license for the period filed with the Texas Alcoholic Beverage Commission. The building official may grant one extension of time for a period not to exceed 30 days upon good cause shown. (Ord. 26579)

306.4 Expiration of application.

306.4.1 Application submitted in conjunction with an application for a construction permit. An application for a certificate of occupancy that is submitted in conjunction with an application for a construction permit shall expire and be void *ab initio* if:

1. no action is taken by the applicant before the 30th day after the building official gives the applicant written notice that additional information, plans, diagrams, computations, specifications, or other data or supporting documents are necessary for issuance of the certificate of occupancy;
2. the application for the construction permit expires; or
3. the construction permit is issued but later expires or is revoked. (Ord. 26029; 26579)

306.4.2 Application not submitted in conjunction with an application for a construction permit. An application for a certificate of occupancy that is not submitted in conjunction with an application for a construction permit shall expire and be void *ab initio* if:

Attach B
Pg 3

1. no inspection is requested by the applicant before the 120th day after the date of its filing unless one or more extensions are granted under Subsection 306.4.3, in which case the application shall be void *ab initio* if no inspection is requested by the applicant during the extended time period(s);
2. no action is taken by the applicant before the 30th day after the building official gives the applicant written notice that additional information, plans, diagrams, computations, specifications, or other data or supporting documents are necessary for issuance of the certificate of occupancy; or
3. no action is taken by the applicant before the 30th day after the building official gives the applicant written notice that corrections and a reinspection are necessary for issuance of the certificate of occupancy. (Ord. 26029; 26579)

306.4.3 Extensions of time. The building official may grant one or more extensions of time for periods not exceeding 120 days each for justifiable cause. If a request for extension is made by the applicant or the applicant's agent, the request must be in writing and made within the time period sought to be extended. (Ord. 26029; 26579)

306.5 Denial. The building official shall deny an application for a certificate of occupancy if the building official determines:

1. The certificate of occupancy requested does not comply with the codes, the *Dallas Development Code*, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations;
2. The information, plans, diagrams, computations, specifications, or other data or supporting documents submitted with the application clearly show that the use or occupancy will be operated in violation of the codes, the *Dallas Development Code*, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations;
3. The application contains false, incomplete, or incorrect information and the applicant has failed to correct or supplement the false, incomplete, or incorrect information within a reasonable time after the building official requests that the information be corrected or supplemented; or
4. The applicant does not possess a required city, county, state, or federal license, permit, or registration to operate the use or occupancy. (Ord. 26579)

306.6 Issuance. Unless the application for the certificate of occupancy has expired under Section 306.4 or has been denied under Section 306.5, the building official shall issue a certificate of occupancy after a complete application has been filed, a true and correct copy of any required city, county, state, or federal license, permit, or registration to operate has been provided to the building official, and every necessary inspection has been made to determine compliance with the codes, the *Dallas Development Code*, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations. (Ord. 26029; 26579)

306.7 Certificate of occupancy. A certificate of occupancy must contain the following information:

1. The address of the structure or land.
2. The name and address of the owner of the structure and land.
3. The name and address of the operator of the use or occupancy.
4. The use and occupancy, in accordance with the provisions of the *Dallas Building Code* or the *Dallas Existing Building Code*, whichever applies, and the *Dallas Development Code*.
5. The certificate of occupancy number.
6. The zoning district where the structure of land is located.
7. Identification of any required city, county, state, or federal license, permit, or registration to operate the use or occupancy. (Ord. 26029; 26579)

306.8 Partial certificate of occupancy. A partial certificate of occupancy may be issued by the building official for the use or occupancy of a portion of a structure prior to the completion of the entire structure. (Ord. 26029; 26579)

306.9 Temporary certificate of occupancy. A temporary certificate of occupancy may be issued by the building official for the temporary use or occupancy of a portion of a structure. The building official shall set a time period during which the temporary certificate of occupancy is valid. When the temporary certificate of occupancy expires, the holder must obtain a certificate of occupancy authorizing the use or occupancy or cease the use or occupancy. The building official may grant one or more extensions of the temporary certificate of occupancy for periods not to exceed 30 days. If a request for extension is made by the applicant or the applicant's agent, the request must be in writing and made within the time period sought to be extended. (Ord. 26029; 26579)

306.10 Posting. The certificate of occupancy shall be posted in a conspicuous place in the premises and shall not be removed except by the building official. (Ord. 26029; 26579)

306.11 Validity. The issuance of a certificate of occupancy does not grant any vested right or give authority to violate any provision of the codes, the *Dallas Development Code*, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations. Any certificate of occupancy presuming to give authority to violate any provision of the codes, the *Dallas Development Code*, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations shall be void *ab initio*. The issuance of a certificate of occupancy shall not prevent the building official from later requiring the correction of errors in any information, plans, diagrams, computations, specifications, or other data or supporting documents, or from preventing a use or occupancy in violation of the codes, the *Dallas Development Code*, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations. (Ord. 26029; 26579)

306.12 Voiding of certificate of occupancy.

306.12.1 Void *ab initio*. A certificate of occupancy shall be void *ab initio* if the use or occupancy authorized by that certificate of occupancy is not commenced before the 120th day after the date of its issuance unless one or more extensions are granted under Subsection 306.12.2, in which case the certificate of occupancy shall be void *ab initio* if the use or occupancy is not commenced during the extended time period(s). (Ord. 26029; 26579)

306.12.2 Extensions of time. The building official may grant one or more extensions of time for periods not exceeding 120 days each if the building official finds that circumstances beyond the control of the holder of the certificate of occupancy have prevented the use or occupancy from being commenced. If a request for extension is made by the applicant or the applicant's agent, the request must be in writing and made within the time period sought to be extended. (Ord. 26029; 26579)

306.12.3 Void. A certificate of occupancy shall be void if:

1. A specific use permit required by the *Dallas Development Code* to operate the use or occupancy expires; or
2. A compliance date for the use or occupancy set by ordinance or the board of adjustment in accordance with the *Dallas Development Code* has passed. (Ord. 26579)

306.13 Revocation of certificate of occupancy. The building official shall revoke a certificate of occupancy if the building official determines that:

1. the certificate of occupancy is issued in error;
2. the certificate of occupancy is issued on the basis of false, incomplete, or incorrect information supplied;

3. a use or occupancy is being operated in a manner that is a substantial danger of injury or an adverse health impact to any person or property and is in violation of the codes, the *Dallas Development Code*, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations;
4. the structure or portion of the structure is a substantial danger of injury or an adverse health impact to any person or property and is in violation of the codes, the *Dallas Development Code*, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations;
5. a required city, county, state, or federal license, permit, or registration to operate the use or occupancy has not been issued, has been revoked, or has expired;
6. the holder of the certificate of occupancy has refused, upon request, to supply the building official with records needed to document the percentage of gross revenue on a quarterly (three-month) basis derived from the sale or service of alcoholic beverages within the required time period; or
7. the use or occupancy authorized by the certificate of occupancy has been discontinued for six months or more. (Ord. 26029; 26579)

306.14 Written notice. Written notice of any action taken or determination made by the building official under this section must be given to the owner of the structure and land and to the operator of the use or occupancy at the address shown on the certificate of occupancy by certified mail with a five-day return receipt requested or by hand-delivery. Except when a compliance date has been set in accordance with the *Dallas Development Code*, the notice must state that the action taken or determination made by the building official is final unless appealed. The fact that the notice is returned undelivered or that the return receipt is not signed by the addressee shall not affect the validity of the notice. (Ord. 26579)

306.15 Appeal of actions and determinations. Any action taken or determination made by the building official under this section shall be final unless appealed as follows:

1. If the action taken or determination made was pursuant to the codes, an appeal must be made to the building inspection advisory, examining, and appeals board in accordance with Section 208 before the 15th day after written notice of the action taken or determination made is given in accordance with Section 306.14; or
2. Except as provided in Paragraph 3, if the action taken or determination made was pursuant to the *Dallas Development Code*, an appeal must be made to the board of adjustment in accordance with the *Dallas Development Code*.
3. A certificate of occupancy that is void because a compliance date for the use or occupancy set by ordinance or the board of adjustment in accordance with the *Dallas Development Code* has passed may not be appealed under this subsection. (Ord. 26029; 26579)



Certificate of Occupancy

City of Dallas

Address: 1809 ROCK ISLAND ST 75207 **Issued Date:** 11/16/2001

Owner: R E DODSON
001809 ROCK ISLAND ST DALLAS TX 75207

DBA: BUCKLEY OIL COMPANY

Land Use: (6379) OFFICE SHOWROOM/WAREHOUSE

C.O.#: 0110101005

Lot:	Block:	Zoning:	IM	PDD:	0	SUP:
Historic Dist:	Consrv Dist:	Pro Park:	0	Req Park:	0	Park Agrmt:
Dwlg Units:	Stories:	Occ Code:	B1	Lot Area:	0	Total Area:
Type Const:	Sprinkler:	Occ Load:		Alcohol:	N	Dance Floor:

Remarks: SAME USE
This CO includes a petroleum product storage and wholesale use with 21 tanks see building permit from 1957. This CO does not mean that the operator is in compliance with the Fire code and other city codes.

Zaida Basora

Zaida Basora, Building Official

BDA 101-068, 069, 070
submitted by Andrew Gilbert
at the
8-14-12
hearing

Attach C

This certificate shall be displayed on the above premises at all times.
Development Services Department | Building Inspection Division | 214/948-4480 | www.dallascityhall.com

BDA 101-068, 069, 070
Submitted by
Art Anderson at
the 8-14-12
hearing
Attach P pg 1

LINDA HENRY TESTIMONY

My name is Linda Henry. I am Vice President of Facility Compliance and Regulatory Affairs for all locations of Buckley Oil and have been a Hazardous Materials Technician and Specialist since 1993, I also have training as Safety Officer and Incident Command System all from Georgia Tech which is one of the top three rated HazMat schools in the U.S. My last certification was in December 2009. I'm also registered with FEMA Emergency Management Institute to serve in times of crisis. I've been involved with the chemical industry for over 35 years.

The petroleum business is a very highly regulated industry. Buckley is a bulk wholesale distributor and I have worked at the Dallas facility for almost 10 years. Part of my responsibilities include reporting to local, state and federal agencies. Other areas of responsibility include safety, health, environmental and regulatory compliance issues which extends to the Department of Homeland Security, Department of Transportation, Federal Motor Carrier Safety Administration, Texas Dept. of Public Safety-Motor Carrier Bureau. We are also a member of NACD or National Association of Chemical Distributors, which is recognized by the EPA. We are audited every three years by third party services to insure we are in compliance with all 45 sections of the audit. Buckley has passed every audit.

Buckley's Dallas facility has 30 employees and serves over 2000 businesses in the DFW area. Buckley has been honored by the Dallas Historical Society as one of the longest-running businesses in Dallas. I am proud to be a Buckley employee and am very proud of Buckley's track record as being a safe workplace. Our safety training and maintenance are continuous...they never stop. Buckley takes its responsibilities to maintain safe facilities and a safe truck fleet very seriously. Buckley is regulated by numerous federal and state agencies, as

Attach D
Pg 2

well as locally by the City of Dallas Public Works & Transportation-Storm Water Mgmt Div., Air Pollution Control Div.; Environmental & Health Services departments, including inspections from Dallas Fire Department both from Station #4 and the Education and Inspection Division. Our facility is inspected almost always annually by either the local station or the Education-Inspection division and numerous other times by a number of governmental entities. We produce at least six reports each year to various agencies and report monthly to the state and EPA. Buckley prides itself on being courteous toward City and other governmental employees and responsive to any concerns that are raised. I have personally met numerous times with DFD employees on-site and Buckley has cooperatively addressed any and all issues up until the City's recent attempts to terminate Buckley's business.

It is important to understand the two primary types of materials stored at Buckley's facility. They are typically petroleum based motor-lube oils or petroleum based solvents. Different types of liquids have different flashpoints which designate what class they would fall into and therefore are subject to different standards or categories of fire hazard rating. For example, many of our tanks contain motor or engine oils, and lubes which would be of the same type used in your personal vehicle. These varying lubricants and transmission fluids are considered combustible products and don't have an explosive nature as such. A flammable liquid is more volatile. When the original tanks were installed at 1809, all of the tanks **were not** required to obtain permits under the Fire Code in effect at that time. The City's 1957 building permit authorized the installation of 21 tanks for flammable liquids. The City did not require permits for the numerous tanks that were installed to hold combustibles like lube oils and the like. That's the reason the 1958 and 1962 aerials show significantly more than 21 tanks on the property.

The City's attempts to shut down Buckley's business started around 2008 when the City began rezoning lands along the Trinity River for high-rise condominiums and mixed-use commercial

Attach D
B3

developments. Then came the recession and the City's interest was not as great. In fact, the City offered to look for alternative sites for Buckley to relocate. Now as real estate development activity in this area has picked up the City revoked our CO and wants us to shut down. The City revoked its offer to find alternative sites to relocate. They state there is no alternative site to relocate to.

As the Buckley employee with the responsibility for governmental compliance and safety, I am offended by the building official's and Assistant Chief Carlin's statements that Buckley's use is being operated in a manner that is a substantial danger of injury or an adverse health impact to any person or property and is in violation of the codes, the Dallas Development Code, or other city ordinances, rules or regulations. We have an excellent operations record and there is no basis for Chief Carlin's claim. Buckley has never had an incident for 55 years. Its track record speaks for itself. Why is Buckley a danger when it has never received a citation and never had a serious incident at the facility?

DFD inspects Buckley at least annually. All of our tanks are above-ground and easily visible. Why is Buckley suddenly a public danger today when it passed 50 years of annual inspections and other agency audits and site inspections?

On June 20, 2012, there was an arts festival held on Rock Island Street. Rock Island runs in front of Buckley's property. I attended the arts festival and saw 100's of spectators, including current and former councilmembers. How could Buckley be considered a public danger when the City of Dallas sponsored a festival with people milling and cars parked in front of Buckley's facility?

Attach D
P54

In 2011 and 2012, representatives of the TCEQ, Dallas' Public Works Management Department and Dallas Environmental and Health Services all inspected Buckley at the request of DFD. None of these agencies found that Buckley posed a risk to persons or property. How can Buckley be considered a public danger when every impartial agency with oversight of Buckley's operations has determined that there is no danger?

I have assisted in preparing numerous building permit and certificate of occupancy applications. The materials submitted to the City in 2010 and 2011 meet all of the requirements for a CO application and are more extensive and detailed than any CO application Buckley has ever submitted. There is no question as to what Buckley was requesting with its CO application, and we request that the Board reverse the building official's decision to deny our CO applications.

I specifically object to the following reasons for denying Buckley's CO application contained in the City's July 18, 2011 letter:

(a) Outlines of fire lanes: The property was developed when there were no fire lane requirements. There is no reason to show fire lanes for a built-out site. We discussed this issue with staff and they indicated they understood showing fire lanes was illogical.

(b) Height of Building One: Building One is not located on 1803 or 1809. The height was addressed on the site plan with the CO.

(c) Sufficient information to categorize the use of buildings: Attachment 5 to the CO application shows this information. The City never asked for additional information during the six months they held the application.

(d) Sufficient information to determine whether mixing and/or dispensing operation in Buildings 3C and F: Attachment 2 to the CO application addressed this issue. In addition, the Tier II report in the possession of the Fire Department.

A Hazel D
PSS

(e) The length of the piping that enters and terminates in Building F: The City's September 23, 2010 letter did not request this information. More importantly, none of the piping enters Building F.

The City building official should not have denied the CO application for 1809 and 1803. In addition, there is no question that the 2001 CO contained a clerical mistake and should have referenced both 1809 and 1803 Rock Island. Buckley requests that the City reverse the building official's revocation of Buckley's CO and to expand the 2001 CO to include 1809 and 1803 Rock Island.

submitted by Art
Anderson at the
8-14-12 hearing
Atch E p 1

OLEN RAY LONG TESTIMONY

My name is Olen Long and I am a professional engineer licensed by the State of Texas, license #93105 in Civil and Mechanical Engineering. I am the President of Long Engineering & Environmental Inc.

Buckley has been a client of mine since 2001. I have consulted for approximately 10 facilities like Buckley's. I signed an affidavit that is in the record, and the statements in the affidavit are true and correct. In 2003, I was asked by R.E Dodson to obtain development permits and any other historical documents that were in the City's files related to 1803-11 Rock Island Street. None of the City departments could find any permits. I personally went down to the permit section and asked if I could go through the microfiche files and they allowed me to do so. I found misfiled the original building permit and CO from 1957. If not for my efforts, it is unlikely that the 1950's permits would ever have been discovered. The City, because it is a large bureaucracy with millions of pages to document, naturally makes mistakes and destroys and misplaces documents several decades old. There are likely other permit approvals for Buckley's facility that the City has not found.

Exhibits 29, 32, 33 and 40 of the City's packet address the dikes located at 1803 and 1809. A dike is the concrete wall around the tanks. The purpose of the dike is to control potential spills. The dikes that are located on the Property meet the code requirements at the time they were built. These same dikes have been used to control spills under the state and local stormwater containment requirements. These dikes were approved by the TCEQ (Texas Commission on Environmental Quality) which has jurisdiction on stormwater runoff issues. My opinion is substantiated in the Industrial Inspection Report by the City's Daniel Cavazos on May 23, 2012 where he states on page 85 of Buckley's packet that "the site is totally contained and does not

discharge” and the “site looks good and there are no issues.” The Fire Department statements that the dikes are not permitted or are unsafe is incorrect.

I have also reviewed Exhibits 27, 28, 29, 42 and 43 of the City’s packet. The City incorrectly identifies the Dallas ordinances that apply to Buckley’s facilities as the current codes. I have addressed this issue in several Texas cities and they always apply the Codes in effect at the time of initial permitting, not today’s codes. For example, in 1957 the City did not require tanks with nonflammable fluids such as lube oils to be permitted and inspected. The 1958 and 1962 aerials show that the tanks installed at 1809 Rock Island in 1957 had City of Dallas approval. These tanks would not meet today’s ordinance requirements but they are still legal. Buckley complies with the applicable and relevant rules and regulations.

Finally, I strongly disagree with the statement in the City’s letters that Buckley’s “use or occupancy is being operated in a manner that is a substantial danger of injury or an adverse health impact to any person or property, and is in violation of the Codes, the Dallas Development Code, or other City ordinances, rules or regulations.” Linda Henry runs an excellent facility, and Buckley is one of the best run facilities of its type. There is always a chance, however slight, that an incident might occur. In addition to my personal observation, the fact that no significant incident has occurred over the last 55 years and the fact that the City has annually inspected Buckley clearly shows that the facility does not present a “substantial danger of injury or an adverse health impact to any person or property.”

Thank you for listening to my testimony.

5400 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270

214.745.5400 OFFICE
214.745.5390 FAX
winstead.com

October 5, 2012

ARTHUR J. ANDERSON
direct dial: 214.745.5745
aanderson@winstead.com

VIA HAND DELIVERY

City of Dallas
Board of Adjustment, Panel A
1500 Marilla, 5BN
Dallas, TX 75201

Re: ZBA ## 168, 169, 170 ("Appeals")

Dear Board members:

This letter responds to the letter hand-delivered to you by Andrew Gilbert at the August 14, 2012 briefing. Contrary to Mr. Gilbert's statements, Buckley's property does not have multiple serious violations of the Dallas City Codes and does not present a "substantial danger of injury to the public." The following statements in Mr. Gilbert's letter are in error:

PAGE 1

1. "The City's Exhibit 30 is the only approved permit for the above-ground storage tanks on the property." In addition to the 1957 permit, the City approved a permit to install seven tanks at 1803 Rock Island in 2001. (See attached Exhibit A and City's Exhibit 30). The installation was signed off and approved by the Fire Department's LaTonya Webster, and the City of Dallas had no issues with the installation of these tanks. Despite the fact there was no pressure testing of the lines after their installation, there have been no operational issues with the pipes or tanks installed at 1803 Rock Island. These lines are inspected on an annual basis.

2. "(The 1957 permit) authorizes (only) the 21 tanks that were installed in 1957." This statement is erroneous in two ways. First, the 1957 permit authorized more than 21 tanks. According to the City of Dallas Building Inspector's April 4, 1957 memo, the City building and fire department officials approved the installation of 21 tanks with "flammable liquids." Additional tanks with lube oils were allowed to be installed and not tested or shown on the site plan. Second, more than 21 tanks were installed from 1957-68. The City Attorney's depiction of 21 tanks with white circles is simply an inaccurate depiction. The attached Exhibit B is an enhanced version of the City's 1962 aerial photograph and it shows significantly more than 21 tanks on the properties at that time. Subsequent statements by the city attorney that the number of tanks increased four-fold from 1962-2011 are incorrect.

3. "Through the years, the City has attempted to work amicably with Buckley to achieve compliance with the Code, which would considerably reduce the dangers on the Properties. The efforts have been unsuccessful because Buckley does not wish to incur the expense of complying." The correspondence in the record does not appear to be amicable on the City's behalf. An amicable resolution has not been achieved because the Fire Department is acting unreasonably by demanding that Buckley meet today's Code requirements and remove its tanks to achieve "compliance". Buckley will be unable to continue its business operations with the small number of tanks demanded by DFD, and there is no ability to add more land to the operation. Attached as Exhibit C is a copy of Chief Marsh's August 2, 2010 e-mail which contains the following sentence: "If Buckley Oil is unable to meet code requirements in its current location because there is not enough land to add more diked areas and not enough money to add foam extinguishing system, then relocating to a larger site would be the best option." Buckley's offers to reach a mutually agreeable, reasonable resolution other than a forced relocation were rejected by the City. In fact, the City withdrew its previous offer to find land for Buckley to relocate.

4. "Anderson's letter wrongly states that the building official can only revoke if the facilities are a substantial danger. The City Code also provides the building official may revoke a CO if a required permit has not been issued, has been revoked, or expired." The City Attorney is correct that § 306 of the Code allows the building official to revoke a CO for various reasons. But the May 18, 2011 letter by the building official revoked the CO for 1803 for two reasons. First, under § 306.13.4, the official must show that a "structure" as opposed to a use must be a substantial danger of injury and must violate city codes. By annually inspecting and allowing Buckley's use to continue for 55 years and approving numerous permits, the City admits that Buckley does not present a substantial danger of injury. Therefore § 306.13.4 does not apply. The May 18, 2011 revocation letter also contains a reference to § 306.13.5 which provides for a CO revocation if a required "city, county, state, or federal license, permit, or registration to operate the use or occupancy has not been issued, has been revoked, or has expired." The May 18, 2011 revocation letter refers to a lack of permits for storage, handling or use of Class I, II or IIIA liquids and building permits for storage tanks. Buckley disputes it is in violation. Further, the City's amendment to the Fire Code attached as Exhibit D does not require an operational permit for these liquids. Therefore the "use or occupancy" provision is not met. Further, Buckley submits a report every year stating the type of liquids in every tank which addresses the City's concerns. Further, § 301.1.1 only addresses the construction of structures. It is not a "license, permit or registration to operate the use or occupancy." Even if Buckley does not have all of the building permits the City states it should have (which is in dispute), Buckley has all of the necessary operational permits which means that § 306.13.5 cannot apply. The CO therefore was wrongly revoked.

PAGE 2

5. "Buckley alleges that there was a 'clerical error' in failing to issue a CO for 1803 Rock Island when it applied for one in 1809 in 2001. There was no clerical error and Buckley's time to appeal any determination from 2001 has expired." The City's statement is disingenuous and incorrect. The building permit application and site plan submitted to the City in 2001 showed the seven tanks to be located at 1803 Rock Island. Neither the City nor Buckley caught this mistake. LaTonya Webster of DFD approved the tank installation on March 12, 2001. The building permit attached as Exhibit E dated July 18, 2001, authorized the construction of permits at 1803 despite the reference to 1809 Rock Island. Attached as Exhibit F is the City form dated October 4, 2001 requiring Buckley to apply for a certificate of occupancy for the tanks installed on 1803. Attached as Exhibit G is the certificate of occupancy dated November 16, 2001 which references 1809, despite the fact that Buckley and the City knew that the tanks were installed at 1803. Both Buckley and the City share responsibility for this oversight which can be corrected by the Board to state that the CO applies to both 1803 and 1809.

6. "The tanks were placed on 1803 Rock Island without the Fire Department's approval and without any CO. Buckley never requested any inspections, the City red-tagged the permit and it expired." As shown in Exhibit A, the Fire Department's LaTonya Webster approved and signed off on the application to install the tanks at 1803. The failure to request inspections of the lines after construction was an oversight. However, the intent of the inspection provision has been met as there have been no leaks or spillage in the ten years of operation. Further, Buckley has never received any notice that the City red-tagged the permit which was approved and recorded in the City records. The only evidence is the City's Exhibit 31 which includes the handwritten note at the top of the page which states "Red tagged and withdrawn." There is no "red tag" and the statement is not verified by a signature or date.

7. "Additionally, Buckley tries to blame the City for bad recordkeeping. The City believes its fire and building permit records for the Property are complete, and that no documents are missing or misplaced." It's a fact that the City has historically misfiled approved permits for these properties which constitutes bad recordkeeping. As Olen Long stated in his affidavit which has been introduced, he was able to find permits which the City staff could not find because they were misplaced in the City files. The City does not dispute this statement. Without Buckley's diligent search, it is possible that nobody would have found these permits. Buckley recently asked the City if it could inspect the City's records to find additional misplaced permits, and the City refused Buckley's request. The City cannot claim that there is an absolute certainty that all of the permits have been produced when it knows there has been misfiling in the past and refuses Buckley's request to search City records to find additional permits.

8. "For Buckley to be correct, the City would have to 'misplace' permits for approximately 60 tanks that have been installed, moved, and/or removed over the course of 55 years." As noted above, the City's numerical calculation is all wrong. Second, as discussed above, it would not be surprising at all for the City to misplace these permits. What is more important and significant is the fact that the City inspected the facility virtually every year for decades and never perceived a problem with the number and location of the tanks. If the facility's tanks were not permitted and a danger, the City would have raised this issue decades ago. Further, there is suspicious evidence as to how the City has treated these permits. As stated above, Exhibit G is the copy of the CO for 1809 signed by Ray Wazny (building official at that time) which was given to Buckley on November 16, 2001. Attached as Exhibit H is a copy provided by the City of a different November 16, 2001 CO for 1809 which Buckley had not previously received. It includes a new note in the "Remarks" section and is signed by "Zaida Basora, Building Official." A significant issue with this document is that Ms. Basora was not the building official in 2001. She was the building official from 2008-10. How could Ms. Basora sign a certificate of occupancy issued in 2001?

PAGE 3

9. "Buckley contends that it provided all information on the City's CO checklist. However, the City Code provides the building official may request additional information. Buckley's response was deficient." Buckley acknowledges that a reasonable amount of additional information may be requested. But the requests must be restricted to issues related to the certificate of occupancy request. Ms. Antebi-Taylor's September 23, 2010 letter requesting additional information is attached as Exhibit I. Buckley satisfied most of these requirements. Virtually all businesses in Cedars West were required to obtain certificates of occupancy. The City requested perfunctory information from virtually all of the businesses other than Buckley. In addition, the building official required Buckley to provide information that was impossible to provide. For example, one of the requests in the September 23, 2010 letter was to show "fire lanes" on the properties. According to the Dallas Development Code, a fire lane must be at least 24 feet wide and meet certain radius requirements. Because the site was developed several decades ago, it is physically impossible to locate a fire lane on the site. The building official denied Buckley's CO application, in part, because a fire lane was not provided. While reasonable information can be requested

in the CO process, the City is not allowed to impose impossible conditions as a pretext to deny a CO. Furthermore, Buckley submitted a detailed revised site plan that addressed virtually all of the requested additional information in October 2010. The City received e-mails from Buckley's representative on December 5, 2010, January 4, 2011, March 4, 2011, and May 12, 2011 requesting status updates and asking if the City needed more information without a response. The City apparently was setting Buckley up to fail. After holding the revised CO application for seven months with absolutely no communication with Buckley, the City arbitrary and presumptively denied the CO applications on May 18, 2011.

10. "Buckley did not timely submit any direct evidence indicating that the facility is safe. Buckley claims that it does not present a substantial danger of injury." The direct evidence that the facility is safe is a 55 year track record of safety. The City annually inspected the facility for 55 years and never stated it was unsafe. The City has not met its obligation to prove Buckley operates an unsafe facility. Attached as Exhibit J is additional evidence of Buckley's 2012 certification by the National Association of Chemical Distributors, the premier organization for chemical distributors. Buckley has passed every three year NACD audit by independent third parties who verify Buckley's operation.

11. "There are many other violations of the Fire Code for which Buckley has been previously placed on notice. For example, the Fire Department was given numerous written notices to Buckley of fire code violations, including on January 10, 2003, January 17, 2003, April 15, 2003, August 31, 2007, January 7, 2009, February 19, 2009, and again on June 8, 2012." Here, the City is either intentionally or unintentionally being deceptive. At no time during the 55 years of operation has the City issued a notice of violation or citation to Buckley. Assuming that the City notified Buckley nine years ago that there were violations, then either they were minor in nature or the City must have considered them cured. Further, the "notices of violation" stated by the City refer to provisions in today's Fire Code, not the fire code in effect at the time of the initial permit for Buckley's project pursuant to Chapter 245, Tex. Loc. Gov't Code. According to § 245.002, the City of Dallas is prohibited from enforcing its fire code provisions enacted after the initial permit was filed by Buckley in 1957. There are exemptions to this prohibition as to certain fire code amendments in § 245.004, but these only apply to "a building or structure intended for human occupancy or habitation." Buckley's property is not intended for human occupancy or habitation, so the statutory prohibition against the City's enforcement stands. That being said, Buckley as a good corporate citizen has attempted to comply with all of the new feasible requirements requested by the City.

12. "The 1951 Dallas Building Code required a building permit for any structure, including a storage tank." The 1951 Code does not state that a building permit was required for tanks; it required building permits for structures. The Building Official's interpretation of the Code in 1957 was that tanks with lube oil were not required to obtain building permits.

13. "Courts have also consistently held that fire code regulations can be applied retroactively." There are no Texas court opinions which have held that code regulations can be applied retroactively to commercial uses. Further, the Texas Legislature has determined that a city cannot make these types of retroactive applications when it enacted Chapter 245, Tex. Loc. Gov't Code. The case law cited by the City Attorney does not apply to the facts in this case. For example, two of the opinions address water sprinklers in multi-family buildings. *Queenside Hills Realty Co v. SAXL*, 328 U.S. 80 (1946); *Crazy Water Retirement Hotel v. State of Texas*, 54 S.W.3d 100 (Tex. App.—Eastland 2001, no pet.). ("The record shows that the residents of the Hotel have an average age of 85 and that many of the residents have impaired mobility requiring wheelchairs and walkers."). Other than allowing retroactive application in these limited instances of multi-family buildings (consistent with the Chapter 245 statutory exception), there are no Texas court opinions supporting the City's position.

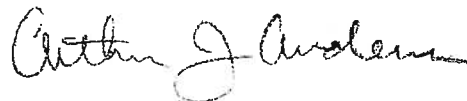
14. "Buckley's consultant, Olen Long, submitted a diking plan to the City which was rejected because the design was flawed." Buckley's diking plan meets the applicable Code requirements. Mr. Long, a licensed Texas engineer, has opined that the diking is adequate. Furthermore, City Exhibits 32 and 33 actually show that the diking plan for the 2001 tank installation was approved by DFD. LaTonya Webster's January 8, 2001 letter states that she "will not be able to approve the design of the diked area." Her follow-up March 12, 2001 letter omits the denial and simply states that she has "reviewed the plans submitted and the following comments have been made." On the building permit site plan attached as Exhibit A, Mr. Webster signed the document approving the diking system and the application to build.

15. "Incompatible liquids cannot be stored together in the same, unapproved, diked area." The Fire Code provisions cited by the City Attorney do not prohibit tanks with Class I and II liquids from being stored in the same area. Class III liquids are not stored with Class I and II liquids. The Code only prohibits corrosive and noncorrosive materials from being stored in the same area. Further, the diked area on the property meet all of the Code requirements in effect at the time they were constructed.

16. "Buckley admits that it is in violation of the Fire Code by not having a foam fire extinguisher system." Buckley admits that § 3404.2.9.1.1 of the Dallas Fire Code contains this provision. However, it does not apply to Buckley because its liquid surface area is less than 1,500 square feet which triggers the requirement. Further, this provision is not mandatory, and the City had not requested a foam system until recently. Finally, this provision was imposed after Buckley's project was constructed and is grandfathered from the foam requirement pursuant to Chapter 245.

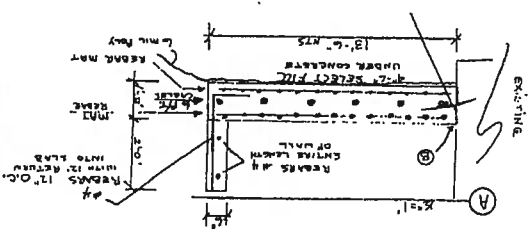
17. "The fact that an arts festival took place in the area directly contradicts Buckley's claim that it is located in an isolated, heavy industrial area with very few people nearby. Buckley is located in a very populated area, near to other establishments that are open to the public." The City's statement that Cedars West is a "very populated area" is nonsensical. Rock Island has industrial businesses historically allowed under the City's Industrial zoning. There are no single-family or multi-family residences in Cedars West. Stating that this is a very populated area is as accurate as the other statements in the City Attorney's letter. Further, to argue that the City's sponsorship of an arts festival on Rock Island for the first time in 55 years means there are large numbers of people who visit Rock Island Street is ludicrous.

Sincerely yours,



Arthur J. Anderson

AJA/plg
Enclosures

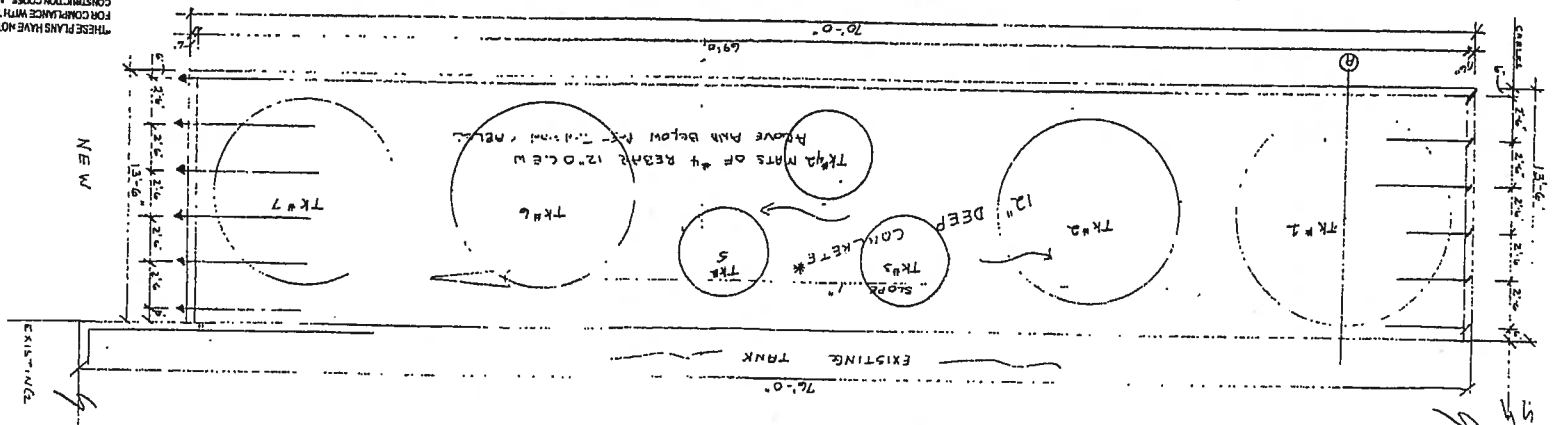


REBAR WILL BE SPACED AS FOLLOWS:

13'-0" TO 15'-0"	15'-0" REBAR
15'-0" TO 18'-0"	18'-0" REBAR
18'-0" TO 21'-0"	21'-0" REBAR

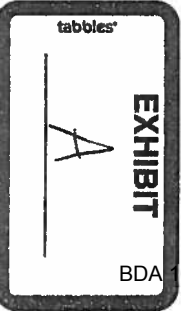
FOR THIS CONCRETE STRENGTH DUE TO THE SOIL BEARING CAPACITY WILL BE 3000 PSI. THE SOIL BEARING CAPACITY WILL BE 3000 PSI. THE SOIL BEARING CAPACITY WILL BE 3000 PSI.

SUBMIT PLANS FOR APPROVAL TO: DALLAS FIRE DEPARTMENT, ROOM 408, 2014 MAIN STREET, DALLAS, TEXAS 75201. FOR ALL COMMENTS ONLY A (5) WILL BE REQUIRED.



THESE PLANS HAVE NOT BEEN REVIEWED IN CONNECTION WITH THESE PLANS IS SUBJECT TO FIELD INSPECTORS APPROVAL.

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1 of 2



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5-50% PAS ING

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FOR COMPLIANCE WITH THE CITY OF DALLAS CONSTRUCTION CODES. ALL WORK PERFORMED IN CONJUNCTION WITH THESE PLANS IS SUBJECT TO FIELD INSPECTORS APPROVAL"

REVIEWED

DALLAS FIRE DEPARTMENT

SUBJECT TO APPROVAL OF
DATE 12-01-2014

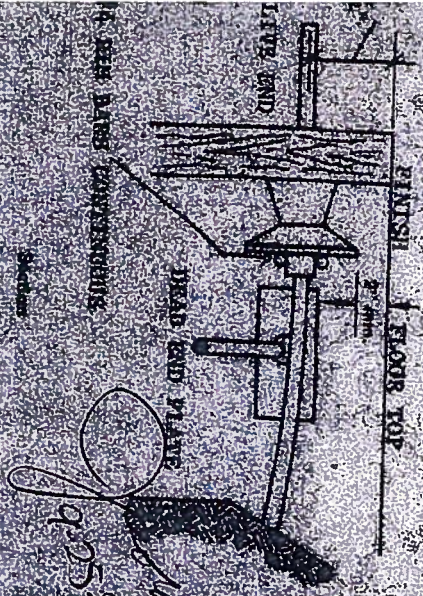
REVIEWED BY
SPECIFIC TO THIS PROJECT ONLY
CONSULT

FINAL REVIEW
FIELD INSURANCE

PLANS 1, 2, 4, 6 AND
OR 3/4" CABLE.
LENGTH OF 30 0 PSI ALL
FROM ABSORBED ELEVATION
FROM CORNERS & FACES.
TIED TO FORM BOARDS TO
NAIL. (2-20# NAILS) FIXED
ON THE FORM BOARD
AND LIVE ANCHOR POINTS
D END ANCHORS WORK IN
PLACEMENT DURING POUR.
NAILS SHALL BE SUPPORTED
UNDER EACH BEAM
BARS, 100% PULL AFTER
THE
ALL SOIL FILLING THE
SAND CUSHIONS ARE
FOR THE FLOOR SLAB.
SAND DISTRON BEHIND
ON THE CLAY SOIL.
THIS SITE

Flammable and Combustible Liquid
storage and handling shall comply with
Article #79 of the Dallas Fire Code.

6) MIL POLYETHYLENE UNDER-
LAYER CONCRETE TO REDUCE FRICTION



Jerry Kling & Assoc
CIVIL ENGINEERS

REGISTERED CIVIL ENGINEERS
DESIGN AND PLANNING
FOUNDATION

NO. 1001
MCKINNEY ST. SUITE 1000
DALLAS, TEXAS 75201
PHONE: 972-443-1111
FAX: 972-443-1112
WWW.JKLING.COM

THIS PLAN HAS BEEN PREPARED IN ACCORDANCE WITH THE SOIL REPORT AND WITH A GENERAL THE READING PROJECT. WE EXPRESSLY DENY ANY PARTICULAR CLAIMS OF A PARTICULAR DESIGNER OR THE OWNER AND SELLER OF ANY AND SOLE DECISION MAKING PROJECT

THIS PROJECT HAS BEEN ASSIGNED TO
ACCOUNTANT FOR VALUE, ETC. (SEE
AND BEAR THEREIN) AS PER
FIELD ANALYSIS PROVIDED

REPORT NO. 19-16-2014
PROJECT NAME: Buckle Up!
PROJECT ADDRESS: 1001
PROJECT CITY: DALLAS, TEXAS

JERRY KLING, P.E.
Professional Engineer
No. 1001 McKinney St., Suite 1000
Dallas, Texas 75201
Phone: 972-443-1111
Fax: 972-443-1112
www.jkling.com

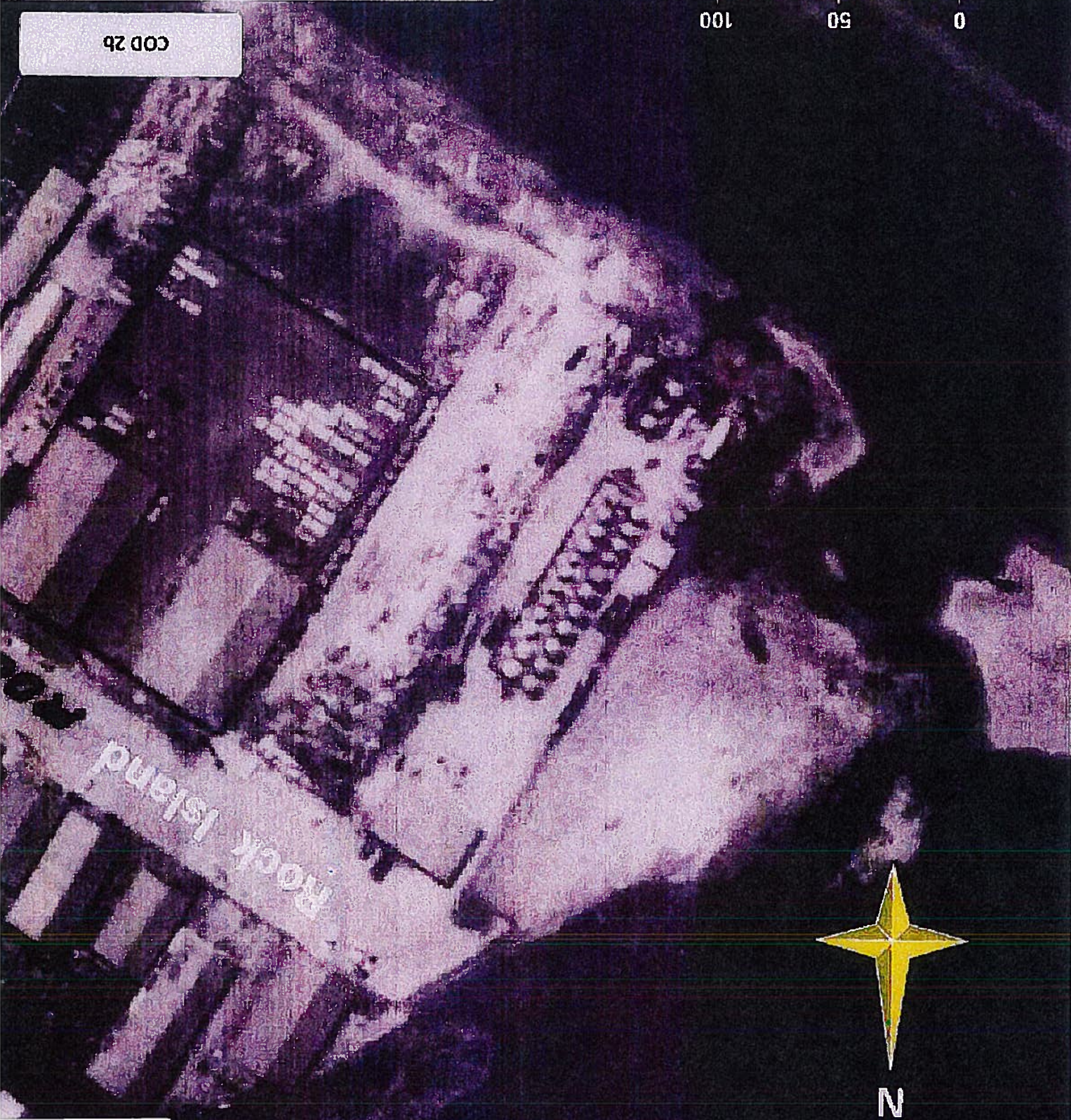
ALL OTHERS ARE TO BE
AND WITH A MINIMUM OF 3" TO 4" SPACING
NOT BEING USED FOR ANY OTHER PURPOSES
OR FOR ANY OTHER USES. THE CONTRACTOR
SHALL BE RESPONSIBLE FOR OBTAINING ALL
NECESSARY PERMITS AND APPROVALS FROM
ALL AFFECTED AGENCIES AND AGENCIES.
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CITY OF DALLAS
PUBLIC WORKS DEPARTMENT
SURVEY DIVISION
1962 Aerial Photography

EXHIBIT
B



COD 2b



Anderson, Art

From: Marsh, Sandra [sandra.marsh@dallascityhall.com]
Sent: Monday, August 02, 2010 9:10 AM
To: Anderson, Art
Subject: RE: Buckley Oil

Mr. Anderson,

You are correct that it is neither this department's nor the City's intent to put anyone out of business but we do require code compliance. If Buckley Oil is unable to meet code requirements in its current location because there is not enough land to add more diked areas and not enough money to add foam extinguishing systems, then relocating to a larger site would be the best option. It is the responsibility of the owner and management of Buckley Oil to provide alternative solutions to the existing code violations. The alternative solutions must provide a level of safety that is equivalent to that provided by meeting the precise code requirements. Please continue seeking alternatives. I have heard no additional information regarding the Trinity River project or its requirements for existing businesses in the affected area since our meeting on July 16th. Hopefully, this situation can be resolved in a manner that is beneficial to all who are involved.

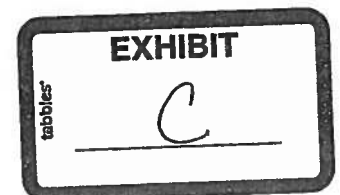
Sandra Marsh, Section Chief
Inspection & Life Safety Education Division
Dallas Fire-Rescue Department
1551 Baylor Street, Suite 400
Dallas, TX 75226
214-670-4375
Fax: 214-670-4324
sandra.marsh@dallascityhall.com

From: Anderson, Art [mailto:aanderson@winstead.com]
Sent: Friday, July 30, 2010 3:28 PM
To: Marsh, Sandra
Subject: RE: Buckley Oil

Chief Marsh, thanks for responding to my email. Our client has reviewed and analyzed your suggestions below. Unfortunately, the separate dike areas would apparently result in the loss of tanks and an uneconomical construction cost that would put Buckley's Rock Island location out of business. As you mentioned at our last meeting and the council stressed at the zoning hearing on the Cedars West PD, the City does not intend or want to put any of the existing businesses out of business. Buckley has made a significant investment in the City of Dallas, pays taxes and employees numerous Dallas residents.

Experience has shown that sound operations is the best way to address fire issues, and it is undisputed that Buckley has some of the best management from an operational standpoint. That's one of the reasons there have been no explosions or serious incidents at the facility since acquired by the current owner. If you have other suggestions that are financially feasible, please let us know so that they can be reviewed and analyzed. Regards, Art Anderson

From: Marsh, Sandra [mailto:sandra.marsh@dallascityhall.com]
Sent: Friday, July 16, 2010 4:09 PM
To: Anderson, Art
Cc: Williams, Kirk
Subject: RE: Buckley Oil



Art,

These systems have to be designed for the application. The only advice that I can give you is to contact 1 - 3 State Licensed fire extinguishing system installers and have them give you a quote for your site. The system would only help out with the tanks that have compatible contents that are too close together. This would not be a satisfactory solution for tanks that should not be stored in the same diked area due to incompatible contents. The diked areas would have to be separated. With side-by-side diked areas a noncombustible partition extending not less than 18 inches above and to the side of the tanks would be required.

Sandra Marsh, Section Chief
Inspection & Life Safety Education Division
Dallas Fire-Rescue Department
1551 Baylor Street, Suite 400
Dallas, TX 75226
214-670-4375
Fax: 214-670-4324
sandra.marsh@dallascityhall.com

From: Anderson, Art [mailto:aanderson@winstead.com]
Sent: Friday, July 16, 2010 3:37 PM
To: Marsh, Sandra
Cc: Williams, Kirk
Subject: Buckley Oil

Chief Marsh,

Thank you for taking the time this afternoon to meet with us and staff. We have taken a look at the options discussed and have the following thoughts:

First, it does not appear that the parking/driveway area on 1803 Rock Island can be used as a relocation area for some of the existing tanks because this area is needed for truck maneuverability.

Second, the existing tanks can't be removed from 1809 and not relocated because this would make the business operation economically infeasible.

Third, we would appreciate if you could provide some more detailed information regarding the fire suppression system you mentioned. Neither Kirk nor I have much knowledge as to what type of system being envisioned, potential manufacturer/installers, construction and maintenance costs, etc. If you could let us know the system that the Fire Department recommends, this will enable Buckley to examine its feasibility for this site.

We look forward to working with you and staff regarding this matter. Regards, Art Anderson

IRS Circular 230 Required Notice—IRS regulations require that we inform you as follows: Any U.S. federal tax advice contained in this communication (including any attachments) is not intended to be used and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or tax-related matter[s].

Information contained in this transmission is attorney privileged and confidential. It is intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone.

5/3/04

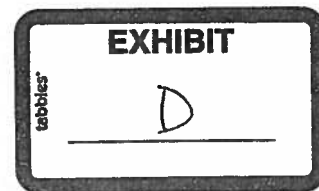
ORDINANCE NO. 25615

An ordinance amending CHAPTER 16, "DALLAS FIRE CODE," of the Dallas City Code, as amended; adopting with certain changes the 2000 Edition of the International Fire Code of the International Code Council, Inc. and the 2000 International Fire Code Standards of the International Fire Code Institute; regulating and governing the safeguarding of life and property from fire and explosion hazards arising from the storage, handling, and use of hazardous substances, materials, and devices, and from conditions hazardous to life or property in the occupancy of buildings and premises, and providing for the issuance of permits for hazardous uses or operations; providing a penalty not to exceed \$2,000; providing a saving clause; providing a severability clause; and providing an effective date.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That CHAPTER 16, "DALLAS FIRE CODE," of the Dallas City Code, as amended, is amended by adopting the 2000 Edition of the International Fire Code of the International Code Council, Inc. (which is attached as Exhibit A and made a part of this ordinance), with the following amendments:

1. Page v, "Sample Ordinance for Adoption of the International Fire Code," is deleted.
2. Subsection 101.1, "Title," of Section 101, "General," of Chapter 1, "Administration," of the 2000 International Fire Code is amended to read as follows:



25615

30. Paragraph 105.6.12, "Cutting and Welding," of Subsection 105.6, "Required Permits," of Section 105, "Permits and Fees," of Chapter 1, "Administration," of the 2000 International Fire Code is amended to read as follows:

"105.6.12 Cutting and welding. A[n ~~operational~~] permit is required to conduct cutting or welding operations within the jurisdiction."

31. Paragraph 105.6.13, "Dry Cleaning Plants"; and Paragraph 105.6.14 "Exhibits and Trade Shows," of Subsection 105.6, "Required Permits," of Section 105, "Permits and Fees," of Chapter 1, "Administration," of the 2000 International Fire Code are deleted.

32. Paragraph 105.6.15, "Explosives," of Subsection 105.6, "Required Permits," of Section 105, "Permits and Fees," of Chapter 1, "Administration," of the 2000 International Fire Code is amended to read as follows:

"105.6.15 Explosives. A[n ~~operational~~] permit is required for the manufacture, transportation, storage, handling, sale or use of any quantity of explosive, explosive material, fireworks, or pyrotechnic special effects within the scope of Chapter 33."

33. Paragraph 105.6.16, "Fire Hydrants and Valves," of Subsection 105.6, "Required Permits," of Section 105, "Permits and Fees," of Chapter 1, "Administration," of the 2000 International Fire Code is deleted.

34. Paragraph 105.6.17, "Flammable and Combustible Liquids," of Subsection 105.6, "Required Permits," of Section 105, "Permits and Fees," of Chapter 1, "Administration," of the 2000 International Fire Code is amended to read as follows:

"105.6.17 Flammable and combustible liquids. A[n ~~operational~~] permit is required:

1. To use or operate a pipeline for the transportation within facilities of flammable or combustible liquids. This requirement shall not apply to the off-site transportation in pipelines regulated by the Department of Transportation (DOTn) (see Section 3501.1.2) nor does it apply to piping systems (see Section 3503.6).

25615

2. To store, handle or use Class I liquids in excess of 5 gallons (19 L) in a building or in excess of 10 gallons (37.9 L) outside of a building, except that a permit is not required for the following:
 - 2.1. The storage or use of Class I liquids in the fuel tank of a motor vehicle, aircraft, motorboat, mobile power plant or mobile heating plant, unless such storage, in the opinion of the code official, would cause an unsafe condition.
 - 2.2. The storage or use of paints, oils, varnishes or similar flammable mixtures when such liquids are stored for maintenance, painting or similar purposes for a period of not more than 30 days.
3. To store, handle or use Class II or Class IIIA liquids in excess of 25 gallons (95 L) in a building or in excess of 60 gallons (227 L) outside a building, except for fuel oil used in connection with oil-burning equipment.
4. To remove Class I or Class II liquids from an underground storage tank used for fueling motor vehicles by any means other than the approved, stationary onsite pumps normally used for dispensing purposes.
5. To operate tank vehicles, equipment, tanks, plants, terminals, wells, fuel-dispensing stations, refineries, distilleries and similar facilities where flammable and combustible liquids are produced, processed, transported, stored, dispensed or used. This shall include tanks, lines, monitor wells and other appurtenances of the tank system.
6. To install, alter, remove, abandon, place temporarily out of service (for more than 90 days) or otherwise dispose of an underground, protected above-ground or above-ground flammable or combustible liquid tank. This shall include tanks, lines, monitor wells and other appurtenances of the tank system.
7. To change the type of contents stored in a flammable or combustible liquid tank to a material which poses a greater hazard than that for which the tank was designed and constructed.
8. To manufacture, process, blend or refine flammable or combustible liquids.
9. To install, construct or alter tank vehicles, equipment tanks, plants, terminals, wells, fuel-dispensing stations, refineries, distilleries and similar facilities where flammable and combustible liquids are produced, processed, transported, stored, dispensed or used.
10. Spraying and dipping operation utilizing flammable or combustible liquids or the application of combustible powders regulated by Chapter 15."

*Red tagged +
Withdrawn*

CITY OF DALLAS
Building Inspection
320 E. Jefferson Blvd.

PERMIT

Permit Fee: 46.00 Permit#: 0107181076
Value of Work: 3000.00 Issue date: 07/18/01
Land Use Code: 3980 Mapsco Page: 45 /Y Dist: 28
Land Use Description: INDUSTRIAL (INSIDE)
Work Description: INSTALLATION TANK
Address:

1809 ROCK ISLAND ST 75207

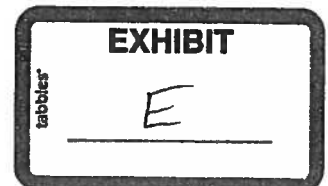
Owner or tenant: BUCKLEY
Address: 1809 ROCK ISLAND ST DALLAS TX 75207
Applicant: DAN GRADY
Contractor: BUCKLEY OIL
Business Address: 1809 ROCK ISLAND ST DALLAS TX 75207
Telephone: 214 421-4147 Fax:

Lot: 015 Block: 73 7342 Act Code: B Dwlg Units:
Work Use: Zoning: IM Own Code: A New Area:
Pro Park: Lot Area: Bedrooms: Stories: 1
Req Park: Totl Area: Baths: Occ Code: B
Sprinkler: Type Const: NA SUP: PDD:

Remarks: SUBJ TO FIRE APPROVAL 214 670-4319/SUBJ TO FLD INSPECTOR APPROVAL
NEED CO BEFORE PERMIT IS FINALLED

This permit is issued on the basis of information furnished in the application and is subject to the provisions of all governing ordinances, which must be complied with, whether or not herein specified.

THIS PERMIT SHOULD BE POSTED AT WORK SITE
AND IS SUBJECT TO CANCELLATION UPON NOTICE.



DALLAS FIRE DEPARTMENT
GENERAL INSPECTION REPORT

FILE
FS # 00/002042

DATE 10-4-01

LOCATION 1809 Rock Island Rd NAME Dan Grady PHONE 214 421 4147
OCCUPANCY Buckley Oil Company ADDRESS
PROPERTY CODE: B LTRS: 1 2 3 REINSPECTION DATE(S)

Maintaining hazardous conditions is a VIOLATION of City ordinances. The following conditions must be corrected immediately:

- Post ADDRESS visible from the street.
- Provide marking/stripping for all designated FIRE LANES.
- Provide ACCESS to fire department connections.
- MAINTAIN fire lanes free of parked vehicles or other obstructions. ●Security gates must comply with DFD Standard #4.
- SECURELY CLOSE all openings to the building within 48 hours to prevent unauthorized entry.
- Provide and maintain - test - repair - FIRE ALARM system.
- Provide and maintain smoke detectors in approved locations for each RENTAL UNIT.
- PROVIDE one _____ rated portable fire extinguisher for each _____ square feet. Maximum travel distance _____
- SERVICE fire extinguishers and recharge those expended. Annual service required by state licensee.
- MOUNT portable fire extinguishers in conspicuous accessible locations.
- MOUNT portable fire extinguishers so that the tops are not more than 5 feet above the floor.
- Install extinguishing system for COOKING APPLIANCES producing grease laden vapors.
- Service extinguishing systems for commercial cooking applications every 6 MONTHS or after activation.
- Remove GREASE from cooking appliances, vent-hoods, ducts, etc.
- Provide and maintain - repair - extend - service - the automatic SPRINKLER system.
- Provide _____ extra sprinklers and a sprinkler WRENCH.
- Discontinue LOCKING - BLOCKING- exit doors, exit windows, or exit pathways.
- Maintain exit doors and/or windows easily OPENABLE without a key or special knowledge.
- Repair illuminated EXIT SIGNS.
- Remove additional LOCKS or LATCHES from exit doors equipped with panic hardware.
- SEAL penetrations in floors, walls, ceilings with approved material.
- Remove the accumulation of combustible WASTE.
- Secure compressed gas CYLINDERS.
- Provide FLAME PROOFING for combustible decorations, drapes, etc.
- Maintain 30 inch clearance to ELECTRICAL equipment.
- Provide COVERS for electrical outlets, switches, junction boxes, and breaker boxes.
- Discontinue using EXTENSION CORDS as substitutes for permanent electrical wiring.
- Provide metal containers with metal lids for the storage of OILY RAGS.
- Maintain STORAGE 18 inches below sprinkler heads, and 24 inches below the ceiling.
- Provide approved CABINETS for storage of flammable/combustible liquids in excess of _____ gallons.
- Obtain City of Dallas PERMIT for: Certificate of Occupancy
- Post OCCUPANT LOAD sign near main exit.

* 320 E Jefferson Blvd *

214 - 948 - 4480

214 670 7013

A \$30.00 REINSPECTION FEE is charged for the SECOND reinspection and \$60.00 for EACH SUBSEQ

Inspector BDA 104068

EXHIBIT

F



City of Dallas

Certificate of Occupancy

1809 ROCK ISLAND ST 75207

**R E DODSON
001809 ROCK ISLAND ST DALLAS TX 75207**

BUCKLEY OIL COMPANY

(6379) OFFICE SHOWROOM/WAREHOUSE

0110101005

Issue Date: 11/16/2001

Lot:	Block:	Zoning:	IM	PDD:	0	SUP:
Historic Dist:	Consv Dist:	Pro Park:	0	Req Park:	0	Park Agmt: N
Dwlg Units: 0	Stories: 1	Occ Code:	B1	Lot Area:	0	Total Area: 0
Type Const:	Sprinkler:	Occ Load:		Alcohol:	N	Dance Floor: N

Remarks: SAME USE

Building Official

Development Services Department | Building Inspection Division | 214/948-4480 | www.dallascityhall.com

tabbles
EXHIBIT
G

BDA 101-068,
069, & 070
Attach F
Pg 16



City of Dallas

Certificate of Occupancy



1809 ROCK ISLAND ST 75207

Issued Date:

11/16/2001



R E DODSON

001809 ROCK ISLAND ST DALLAS TX 75207



BUCKLEY OIL COMPANY



(6379) OFFICE SHOWROOM/WAREHOUSE



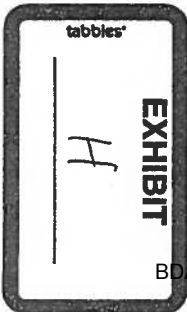
0110101005

Lot:	Block:	Zoning:	IM	PDD:	0	SUP:	
Historic Dist:	Consv Dist:	Pro Park:	0	Req Park:	0	Park Agmt:	N
Dwlg Units: 0	Stories: 1	Occ Code:	B1	Lot Area:	0	Total Area:	0
Type Const:	Sprinkler:	Occ Load:		Alcohol:	N	Dance Floor:	N

Remarks: SAME USE
 This CO includes a petroleum product storage and wholesale use with 21 tanks see building permit from 1957. This CO does not mean that the operator is in compliance with the Fire code and other city codes.

Zalda Basora, Building Official

Development Services Department | Building Inspection Division | 214/948-4480 | www.dallascityhall.com



BDA 101-068

BDA101-068
069, & 70
Attach F
Pg 17



CITY OF DALLAS

BDA 101-068
069, & 070
Attach F
Pg 18

September 23, 2010

Art Anderson
Winstead, PC
5400 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270

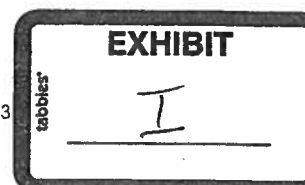
Certified Mail # 7009 0960 0000 9572 5577

Re: Buckley Oil Company Certificate of Occupancy Application Nos. 1008021063
and 1008021064 (the "applications")

Dear Mr. Anderson:

We have completed the initial review of the applications. The "warehouse" and "office/showroom/warehouse" uses referenced in the applications suggest general non-hazardous activities, which are typically B and S general occupancy classifications under the building and fire code. But other information provided in your applications and plans raise questions about the continued appropriateness of a general occupancy classification versus a hazardous occupancy classification. Thus, pursuant to Dallas City Code Chapter 52, "Administrative Procedures for the Construction Codes," Section 306.1, we require the following additional information to continue processing the applications:

1. A land use statement for each building site (1803, 1809, and 1811 Rock Island Street) that identifies all uses and activities, including what appears to be a fuel dispensing station on one of the building sites. Please be specific and include information about the mixing, blending, storage, or manufacturing of any chemicals or other substances and identify each chemical or substance and its common purpose. Please identify the locations and amount of area dedicated to mixing, blending, manufacturing, or storage of any chemicals or other substances.
2. Two scaled site plans for each building site (1803, 1809, and 1811 Rock Island Street) that include:
 - (a) A delineation of the fire lanes.
 - (b) The location of the fire hydrants in relation to structures.
 - (c) A label for each shed or roofed structure, e.g. the main address plus building 1, 2, 3, etc.
 - (d) The square footage of each shed or roofed structure.
 - (e) The number of stories of each shed or roofed structure.



Letter to Art Anderson
September 23, 2010
Page 2 of 3

- (f) The height of each shed or roofed structure.

Also, the following comments on your plans imply that storage is occurring underneath roofed areas:

“New Building: Trucked Product Offload with piping to AST’s.”
“Grease in 20-Gallon Kegs & 5-Gallon Pails.”
“Lubricating Oils Drums.”
“Full Drum staging area.”
“Drummed Products: Miscellaneous Additives and TCE.”
“Waste Storage: 275 Gallon T and 500-Gallon AST.”
“Approx. 40X50 Locked Shed area with small containers.”
“Empty Drums and Drummed Products in Shed.”

Please provide the following additional information on your plans for each item quoted above:

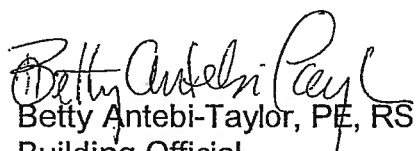
1. Label the uses occurring in or underneath each shed or roofed structure.
2. List the materials stored or used in or underneath each shed or roofed structure, including:
 - (a) Chemical or substance and/or market names for each.
 - (b) Classifications for each chemical or substance: whether hazardous or not hazardous. Please be specific about the physical and/or health hazard or state that the material is neither a physical or health hazard.
 - (c) Aggregate quantity of each chemical or substance.
 - (d) Typical unit container sizes.
 - (e) Chemicals or substances that are piped under roofed structures.
 - (f) Total volume of piping underneath a roofed structure or in a building. The total volume of piping underneath a roofed structure or in a building is considered to be all of the piping measured beginning at the first point in which each pipe enters the building or first extends underneath the horizontal projection of the roof above and includes the entire length of piping. Total volume of piping includes any vessels into which chemicals or other substances are dispensed and stored underneath a roofed structure or in a building.

Letter to Art Anderson
September 23, 2010
Page 3 of 3

Please provide the information requested before the 30th day after the date of this letter as the applications shall expire and be void *ab initio* if Buckley Oil takes no action within this time. See Dallas City Code Chapter 52, "Administrative Procedures for the Construction Codes," Section 306.4.2.

Additionally, any illegal or hazardous conditions on these building sites do not have nonconforming rights and must be satisfactorily addressed in accordance with the Dallas Development Code and the Dallas Building Construction Codes (including the Dallas Fire Code) before certificates of occupancy may be issued.

Sincerely,



Betty Antebi-Taylor, PE, RS
Building Official

Building Inspection

Sustainable Construction and Development Department

c: Larry Holmes, Assistant Building Official
Phil Sikes, Assistant Building Official



RESPONSIBLE DISTRIBUTION VERIFICATION

As of July 30, 2012

Congratulations! NACD is pleased to announce that the following Members and Chemical Handler Affiliates have successfully passed NACD's 4th cycle (2010-2012) on-site Responsible Distribution Verification, demonstrating their commitment to the implementation of Responsible Distribution's environmental, health, safety, and security requirements.

A.G. Layne, Inc.
 Accron, LP
 Acid Products Co., Inc.
 Advanced Chemical Concepts, Inc.
 Advanced Chemical Logistics, Ltd.
 Alchem Chemical Company
 Allied Universal Corporation
 Amber Chemical, Inc.
 American International Chemical, Inc.
 Americhem Sales Corporation
 Amware Logistics Services dba NKM Warehousing*
 Andes Chemical Corporation
 ARC Products, Inc.
 Archway Sales Inc.
 Argo Chemical, Inc.
 Astro Chemicals, Inc.
 B.H. Roettker Co., Inc.
 Barton Solvents, Inc.
 Basstech International LLC
 Bedford Specialty Sales, Inc.
 BHS Marketing LLC
 Bison Laboratories, Inc.
 BKM Resources, Inc. - Global Chemicals
 Boehle Chemicals, Inc.
 Borden & Remington Corp.
 Bossco Industries, Inc.
 Brainerd Chemical Company, Inc.
 Brenntag North America, Inc.
 Brown Chemical Co., Inc.
 Buckley Oil Company
 Cadence Chemical Corporation
 Cal-Chem
 Callahan Company
 Carus Corporation
 Cascade Columbia Distribution
 CCC
 Chautauqua Metal Finishing Supply
 Chem One Ltd.
 Chem/Serv, Inc.
 CheMarCo, Inc.
 Chemical Distributors Inc.
 Chemical Distributors, Inc.
 Chemical Solvents, Inc.
 Chemicals, Inc. USA, a Chemgroup Co.
 Chemisphere Corporation

Chem-Materials Co., Inc.
 Chemsolv, Inc.
 Chem-Way Corporation
 Chou Enterprises Ltd
 Coast Southwest, Inc.
 Colonial Chemical Solutions, Inc.
 Columbus Chemical Industries, Inc.
 Conchemco, Ltd.
 Cone Solvents, Inc.
 Connell Bros. Company, Ltd.
 CSD/Startex Distribution
 D & F Distributing, Inc.
 D.B. Becker Company, Inc.
 D.N. Lukens, Inc.
 Dakota Distributing, LP
 Dar-Tech, Inc.
 Deeks & Company, Inc. (Ga)
 DeWolf Chemical, Inc. and its Subsidiary,
 Glenn Corporation
 Dorsett & Jackson, Inc.
 DPC Industries, Inc.
 Dunleary, Inc.
 Durr Marketing Associates, Inc.
 E.M. Sullivan Associates, Inc.
 E.W. Kaufmann Co.
 Edson Industries
 Emco Chemical Distributors, Inc.
 Essential Ingredients, Inc.
 Expo Chemical Co., Inc.
 FBC Chemical Corp.
 Fenway Materials, Inc.
 Fitz Chem Corporation
 G.J. Chemical Co., Inc.
 G.R. O'Shea Company
 Gallade Chemical, Inc.
 Gehring-Montgomery, Inc.
 George S. Coyne Chemical Co., Inc.
 Gilbert & Jones Company Inc.
 Gillen Company, LLC
 Greenchem Industries LLC
 Gulf Coast Chemical, LLC
 Hall Technologies, Inc.
 Harcros Chemicals, Inc.
 Harris & Ford, LLC
 Harry W. Gaffney & Co., Inc.
 Harwick Standard Distribution Corp.

Hawk Chemical Company, Inc.
 Helm U.S. Corporation
 Holland Applied Technologies
 Horn
 Houghton Chemical Corporation
 Hubbard-Hall Inc.
 Hydrite Chemical Co.
 Ideal Chemical & Supply Co.
 Independent Chemical Corporation
 Industrial Chemicals Corp.
 Industrial Chemicals, Inc.
 Industrial Chemicals, Inc.
 Inland Star Distribution Centers, Inc.*
 International Distribution Corporation*
 Interstate Chemical Co., Inc.
 J. Drasner & Co., Inc.
 J. Tech Sales, LLC
 J.H. Calo Company, Inc.
 Jensen-Souders & Associates, Inc.*
 JR Hess Company
 K.A. Steel Chemicals, Inc.
 K.G. International, Inc.
 KIC Chemicals, Inc.
 KODA Distribution Group
 Kohl Marketing, Inc.
 Kraft Chemical Company
 K-Solv, LP
 Lacy's Express, Inc.*
 Lidochem, Inc.
 Lincoln Fine Ingredients
 Linden Bulk Transportation
 Linden Warehouse and Distribution Co., Inc.*
 Lintech International
 Lipscomb Chemical Co., Inc.
 Lowe Chemical Co.
 M Chemical Company, Inc.
 Majemac Enterprises Inc.
 Maroon Incorporated
 Maryland Chemical Company, Inc.
 Matteson-Ridolfi, Inc.
 Mays Chemical Company, Inc.
 McCullough & Associates
 Mehaffey & Daigle, Inc.
 Miles Chemical Company
 Mobile Solvent & Supply, Inc.
 Mutchler Inc., Pharmaceutical Ingredients



New England Resins & Pigments Corp.
NorFalco Inc.
Norman, Fox & Co.
North Industrial Chemicals, Inc.
Ohio Chemical Services, Inc.
Pacific Coast Chemicals Co.
Palmer Holland, Inc.
Parchem - Fine & Specialty Chemicals
PhibroChem
Pochteca Materias Primas S.A. de C.V.
Pride Solvents & Chemical Co., Inc.
Producers Chemical Company
PVS-Nolwood Chemicals, Inc.
Quaker City Chemicals, Inc.
R.E. Carroll, Inc.
Radchem Products, Inc.
Raw Materials Corporation
Reagent Chemical & Research, Inc.
Research Solutions
Rierden Chemical & Trading Company
Riverside Chemical Co., Inc.
Roberts Chemical Co., Inc.
Ross Organic Specialty Sales, Inc.
Rowell Chemical Corp.
Royale Pigments and Chemicals, Inc.
Sagar Enterprises, Inc.
Sal Chemical
Schibley Chemical Company, Inc.
Sea-Land Chemical Co.
Seeler Industries, Inc.
Shepard Bros. Inc.
Slack Chemical Co., Inc.
SolvChem, Inc.
Specialty Chemical Sales, Inc.
Stockton Sales, Inc.
Store+Deliver+Logistics Pte Ltd.*
Superior Materials, Inc.
Superior Solvents and Chemicals
Surpass Chemical Co., Inc.
T.H. Hilson Company
Tanner Industries, Inc.
Tarr, LLC
Tavco Chemicals, Inc.
TCR Industries
Technical Products, Inc.
Thatcher Company
The Cary Company
The M.F. Cachat Company
The Meadows Group, LLC
The Plaza Group
Third Coast Terminals, Inc.
Thornley Company, Inc.
Tilley Chemical Co., Inc.
TLC Ingredients, Inc.
TMC Materials, Inc.

Trans Western Chemicals, Inc
TransChem, Inc.
Transchemical Inc.
Tri-iso, Inc.
TRInternational, Inc.
U.S. Chemicals, LLC
Univar
USA Container Co. Inc.*
Valley Solvents & Chemicals
Van Horn, Metz & Co., Inc.
Veckridge Chemical Company, Inc.


Viking Chemical Company
Vivion, Inc.
Walsh & Associates, Inc.
Wausau Chemical Corporation
Webb Chemical Service Corp.
Weber Logistics*
Whitaker Oil Company
William B. Tabler Co., Inc.
Wilson Industrial Sales Co., Inc.
World Metal, LLC

CHEMICAL

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- Landstar Transportation Services

BULK TRANSFER


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- Truck to Drum/Tote



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DISTRIBUTION, INC.
An ISO Certified Company

SUNLANDDISTRIBUTION.COM
800.295.0081

a proud affiliate of
nacd
National Association of
Chemical Distributors



GREENVILLE | SPARTANBURG | CHARLESTON



City of Dallas

APPLICATION/APPEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 101-068

Data Relative to Subject Property:

Date: 6-3-11

Location address: 1809 Rock Island St Zoning District: PD 784

Lot No.: 15 + Block No.: 73/7342 Acreage: 0.71 Census Tract: 0033.00

Street Frontage (in Feet): 1) 90' 2) _____ 3) _____ 4) _____ 5) _____

To the Honorable Board of Adjustment :

Owner of Property/or Principal: Buckley Oil Company

Applicant: Tommy Mann, Winstead PC Telephone: (214) 745-5724

Mailing Address: 1201 Elm St., suite 5400 Zip Code: 75270

Represented by: _____ Telephone: _____

Mailing Address: _____ Zip Code: _____

Affirm that a request has been made for a Variance __, or Special Exception __, of Appeal of building official decision to revoke the existing certificate of occupancy for the property. The decision was received on May 20, 2011.

Application is now made to the Honorable Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described request for the following reason:

The business has been legally operating for many years in compliance with numerous regulations of various government and regulatory agencies including the City of Dallas. Owner does not waive any legal rights by filing this appeal.

Note to Applicant: If the relief requested in this application is granted by the Board of Adjustment, said permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

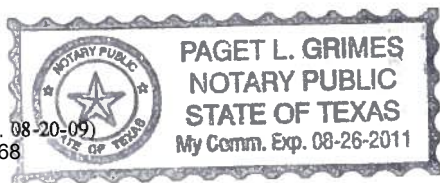
Respectfully submitted: TOMMY MANN _____
Applicant's name printed Applicant's signature

Affidavit

Before me the undersigned on this day personally appeared Tommy Mann who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

Tommy Mann
Affiant (Applicant's signature)

Subscribed and sworn to before me this 2nd day of June, 2011



David G. Grimes
Notary Public in and for Dallas County, Texas

MEMORANDUM OF
ACTION TAKEN BY THE
BOARD OF ADJUSTMENT

Date of Hearing _____

Appeal was--Granted OR Denied

Remarks _____

Chairman

Building Official's Report

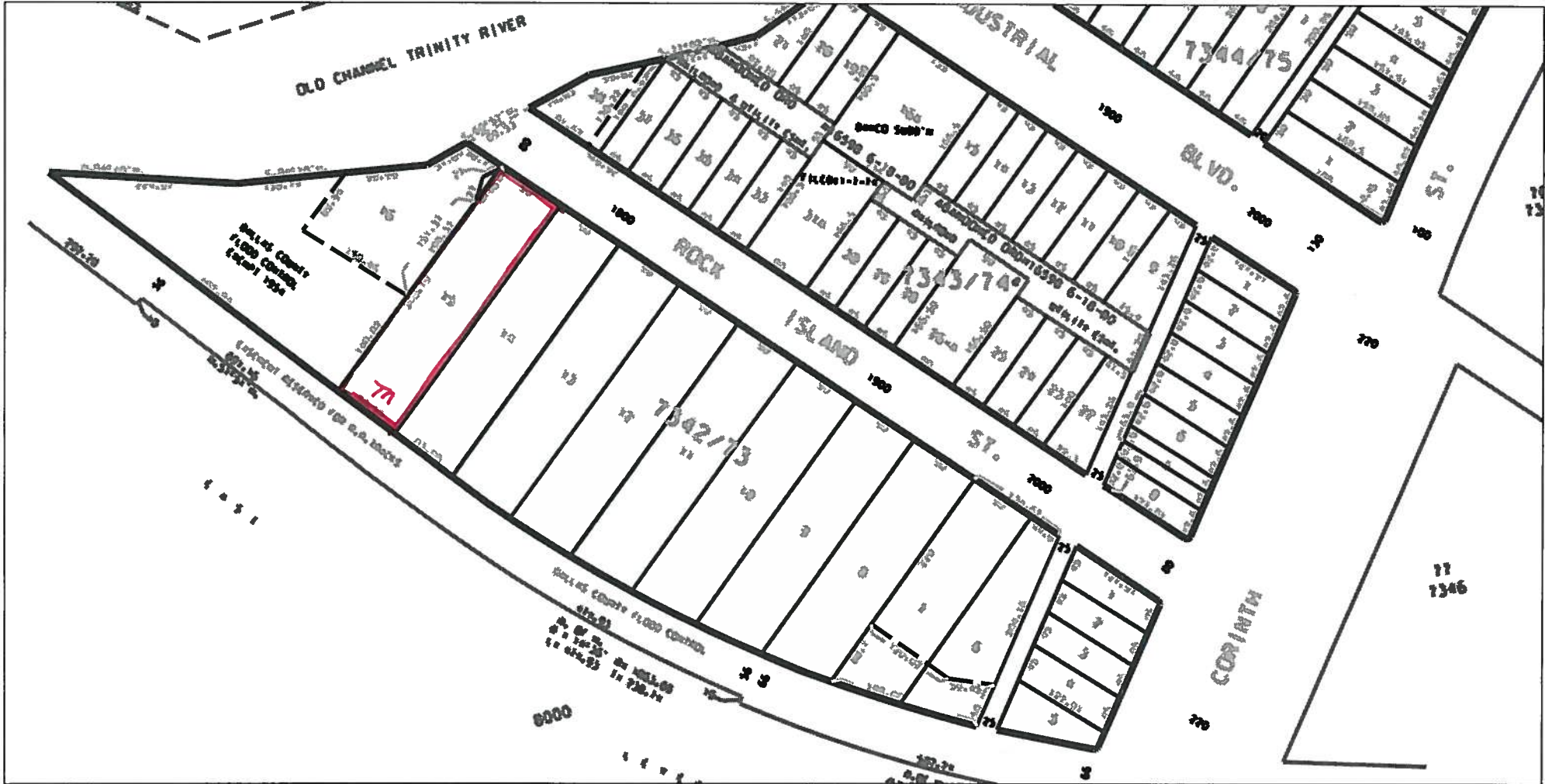
I hereby certify that TOMMY MANN

did submit a request to appeal the decision of the administrative official
at 1809 Rock Island Street

BDA101-068. Application of Tommy Mann to appeal the decision of the administrative official at 1809 Rock Island Street. This property is more fully described as Lot 15 and part of Lot 16 in city block 73/7342 and is zoned PD-784, which requires that the building official revoke a certificate of occupancy if the building official determines that the certificate of occupancy was issued on the basis of false, incomplete, or incorrect information; the use is being operated in violation of the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations. The applicant proposes to appeal the decision of an administrative official in the revocation of a certificate of occupancy.

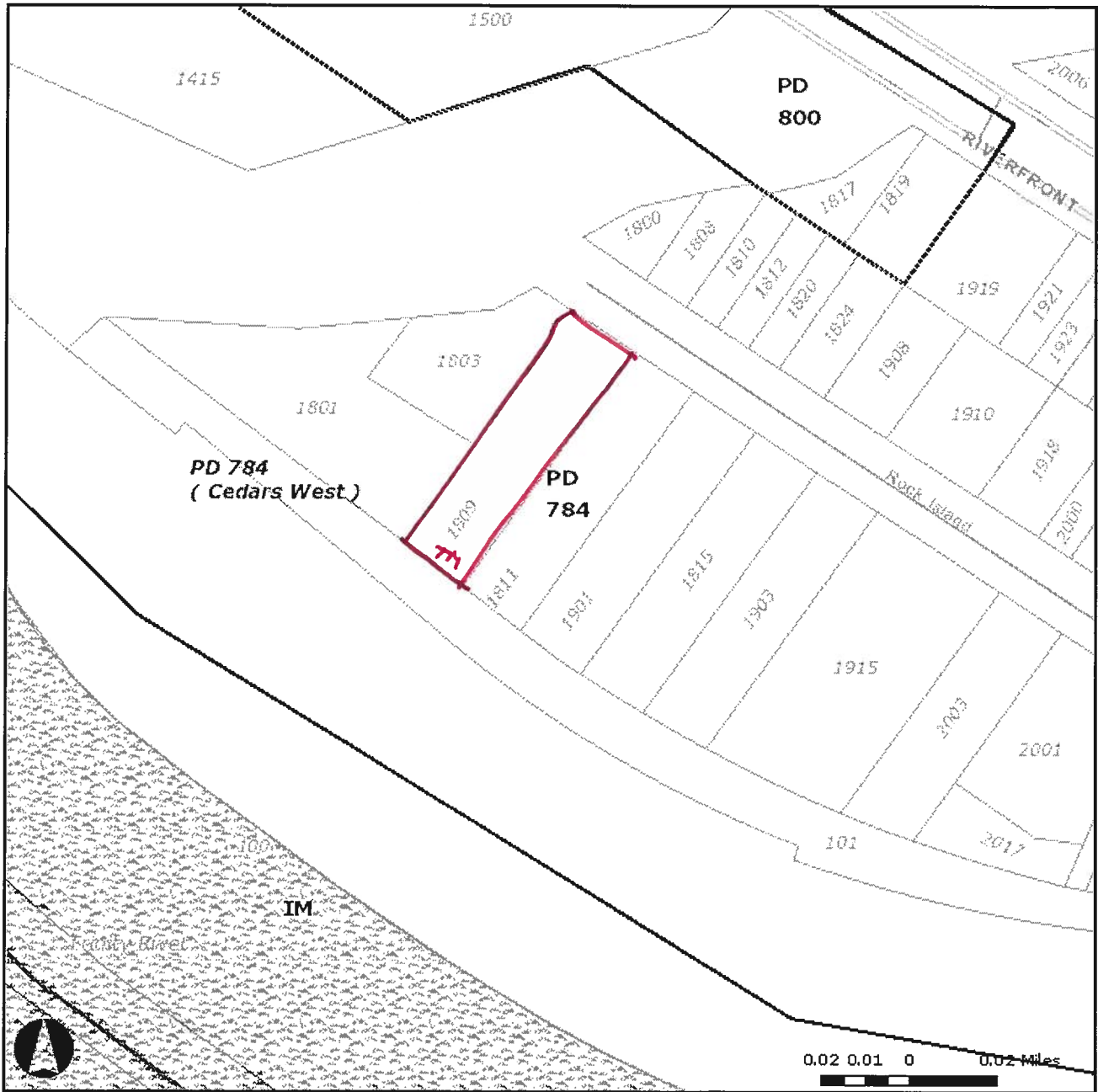
Sincerely,

Batsheba Antebi
Batsheba Antebi, Building Official



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City of Dallas Zoning



- City Boundaries
- County
- Certified Parcels
- DISD Sites
- Council Districts
- Waterways
- Parks

- SUP
- Dry Overlay
- D-1
- Historic Overlay
- Historic Subdistricts
- NSO Overlay
- NSO Subdistricts

- PD Subdistricts
- PD193 Oak Lawn
- PDS Subdistricts
- Base Zoning
- Pedestrian Overlay
- CP
- SP
- Environmental Corridors



CITY OF DALLAS

May 18, 2011

Arthur Anderson
Winstead, P.C.
5400 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270

CERTIFIED MAIL # 7000 0520 0022 2596 9375
RETURN RECEIPT REQUESTED

RE: Revocation of certificate of occupancy no. 0110101005 ("the CO") for a petroleum product storage and wholesale use at 1809 Rock Island Street ("the Property") owned by Buckley Oil Company ("Buckley Oil")

Dear Mr. Anderson:

This letter is to inform you that the CO for a petroleum product storage and wholesale use on the Property is hereby revoked and any use operating on the Property without a certificate of occupancy is an illegal land use that must immediately cease operating.¹

The building official shall revoke a certificate of occupancy if the building official determines that a use or occupancy is being operated in a manner that is a substantial danger of injury or an adverse health impact to any person or property and is in violation of the codes, the Dallas Development Code, or other city ordinances, rules, or regulations.²

The Fire Department has determined that because of the many Dallas Fire and Construction Code violations on the Property and described in this letter, the use or occupancy is being operated in a manner that is a substantial danger of injury or adverse health impact to persons and property. These violations include:

- (1) Failure to provide and maintain required spatial separation between tanks containing flammable or combustible liquids in violation of Section 3404.2.9.5.1.1 of the Dallas Fire Code;
- (2) Failure to obtain a permit for storage, handling, or use of Class I, II, or IIIA liquids in violation of Section 105.6.16 of the Dallas Fire Code;
- (3) Failure to obtain acceptance tests for tanks being placed into service in violation of Section 3404.2.12.1 of the Dallas Fire Code; and

¹ Subsection 306.13, "Revocation of Certificate of Occupancy," of Chapter 52, "Administrative Procedures for the Construction Codes," of the Dallas City Code; Section 1.104, "Certificate of Occupancy," of Chapter 51A of the Dallas Development Code; Subsection 306.1, "Use or Occupancy," of Chapter 52, "Administrative Procedures for the Construction Codes," of the Dallas City Code; and Subsection 306.2, "Change in Use or Occupancy," of Chapter 52, "Administrative Procedures for the Construction Codes," of the Dallas City Code.

² Paragraph 3 of Subsection 306.13, "Revocation of Certificate of Occupancy," of Chapter 52, "Administrative Procedures for the Construction Codes," of the Dallas City Code.

May 18, 2011
CO 0110101005 Revocation
Page Two (2)

(4) Failure to obtain a permit for storage tanks in violation of Section 301.1.1 of Chapter 52, "Administrative Procedures for the Construction Codes," of the Dallas City Code.³

Additionally, the building official shall revoke a certificate of occupancy if the building official determines that a required city license, permit, or registration to operate the use or occupancy has not been issued.⁴ Past inspections of the Properties by the Fire Department have revealed that Buckley Oil has not obtained required city permits, including:

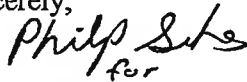
(1) Permits for storage, handling, or use of Class I, II, or IIIA liquids in accordance with Section 105.6.16 of the Dallas Fire Code; and

(2) Permits for storage tanks in accordance with Section 301.1.1 of Chapter 52, "Administrative Procedures for the Construction Codes," of the Dallas City Code.⁵

Thus, the building official must revoke the CO.⁶

Any determination made by the building official shall be final unless appealed within 15 days after you receive this letter.⁷ Questions about the appeal process should be directed to the building official at 214-948-4320.

Sincerely,



Betty Antebi, PE
Building Official
Sustainable Development & Construction

Enclosures (2)

c: Theresa O'Donnell, Director, Sustainable Development and Construction
Chris Bowers, First Assistant City Attorney
Andrew M. Gilbert, Assistant City Attorney
Cynthia Michaels, Section Chief, Inspection & Life Safety Education, Fire Department
Kevin Sipes, Deputy Chief, Inspection & Life Safety Education, Fire Department

³ See attached letter dated February 19, 2009 to Arthur Anderson regarding Fire Code and zoning violations at 1803, 1809, and 1811 Rock Island Street. The list of Fire Code violations in this letter is not an exhaustive list of all of the violations on the Properties.

⁴ Paragraph 5 of Subsection 306.13, "Revocation of Certificate of Occupancy," of Chapter 52, "Administrative Procedures for the Construction Codes," of the Dallas City Code.

⁵ See attached letter dated February 19, 2009 to Arthur Anderson regarding Fire Code and zoning violations at 1803, 1809, and 1811 Rock Island Street. The list of violations in this letter is not an exhaustive list of all of the violations on the Properties.

⁶ See attached memorandum dated May 13, 2011 to the building official from Assistant Chief and Fire Marshal Carlin regarding the substantial danger at the Property.

⁷ Paragraph 2 of Section 306.15, "Appeals of Actions and Determinations," of Chapter 52, "Administrative Procedures for the Construction Codes," of the Dallas City Code and Paragraph (2) of Subsection (a), "Initiation," of Section 51A-4.703, "Board of Adjustment Hearing Procedures," of the Dallas Development Code.

Memorandum



DATE May 13, 2011

TO Batsheba Antebi
Building Official

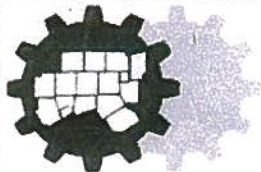
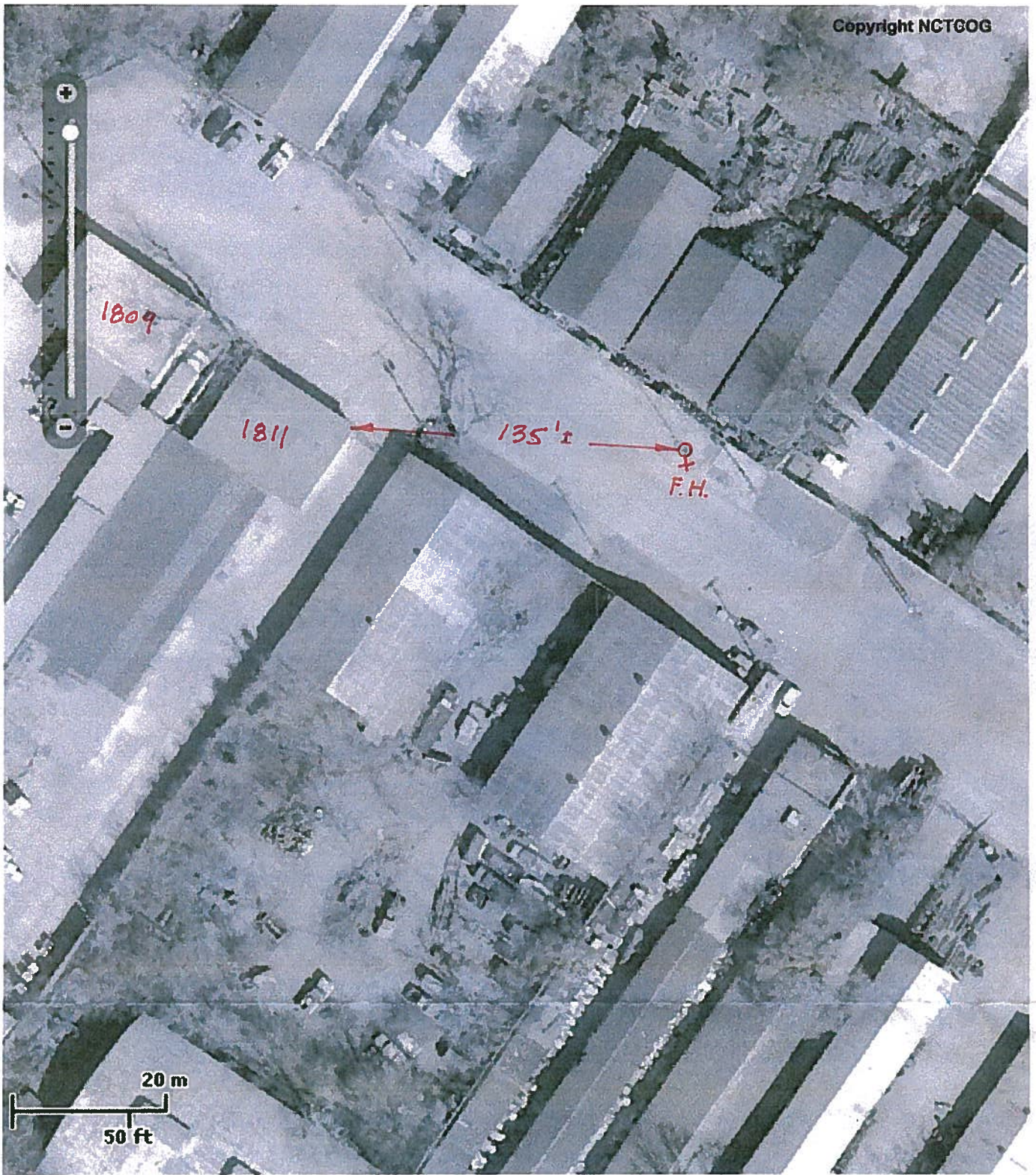
SUBJECT Buckley Oil's Certificate of Occupancy Requests for 1803 and 1809 Rock
Island Street, Dallas, TX

I have determined that the use or occupancy at the subject locations is being operated in a manner that is a substantial danger of injury or adverse health impact to any person or property and is in violation of the Dallas Fire Code. Of major concern at 1809 Rock Island St. are the many unpermitted aboveground tanks in which flammable and combustible liquids are stored. The tanks are located too close to each other in diking that is inadequate for the number of tanks and volume of liquid being stored. Incompatible liquids are stored together in the same diked area. An unpermitted fuel dispensing facility is operating at 1803 Rock Island St. The fuel for this system is piped from the storage at 1809 Rock Island St. No foam fire extinguishing system or equipment has been provided for fighting the large flammable or combustible liquid fires that could occur on these properties. In the event of a fire the majority of the tanks would explode and thereafter burn for many days. Such an event would result in significant damage to the properties and possibly nearby properties, could result in the loss of life, would pollute the air and ground, and would likely contaminate the Trinity River. It is my recommendation that the certificate of occupancy request for 1803 Rock Island St. be denied and that the existing certificate of occupancy for 1809 Rock Island St. be revoked.



Debra Carlin, Assistant Chief/Fire Marshal
Life Safety and Professional Standards Bureau
Dallas Fire-Rescue Department

sdm



North Central Texas
Council of Governments

My Map

DFWMaps.com

<http://www.dfwmaps.com/#>

DISCLAIMER

This data has been compiled for NCTCOG. Various official and unofficial sources were used to gather this information. Every effort was made to ensure the accuracy of this data, however, no guarantee is given or implied as to the accuracy of said data.



Fire Hydrant approx. 135' from 1811 Rock Island St.



1

ATTACHMENT 3



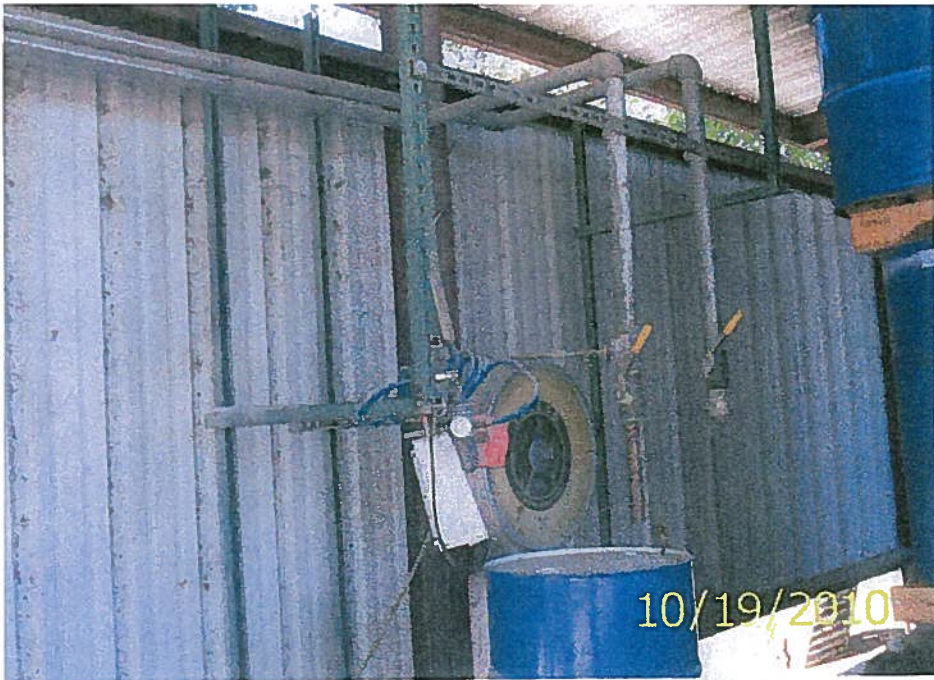
2



BDA 101-068



5-50



5/

Attachment 4

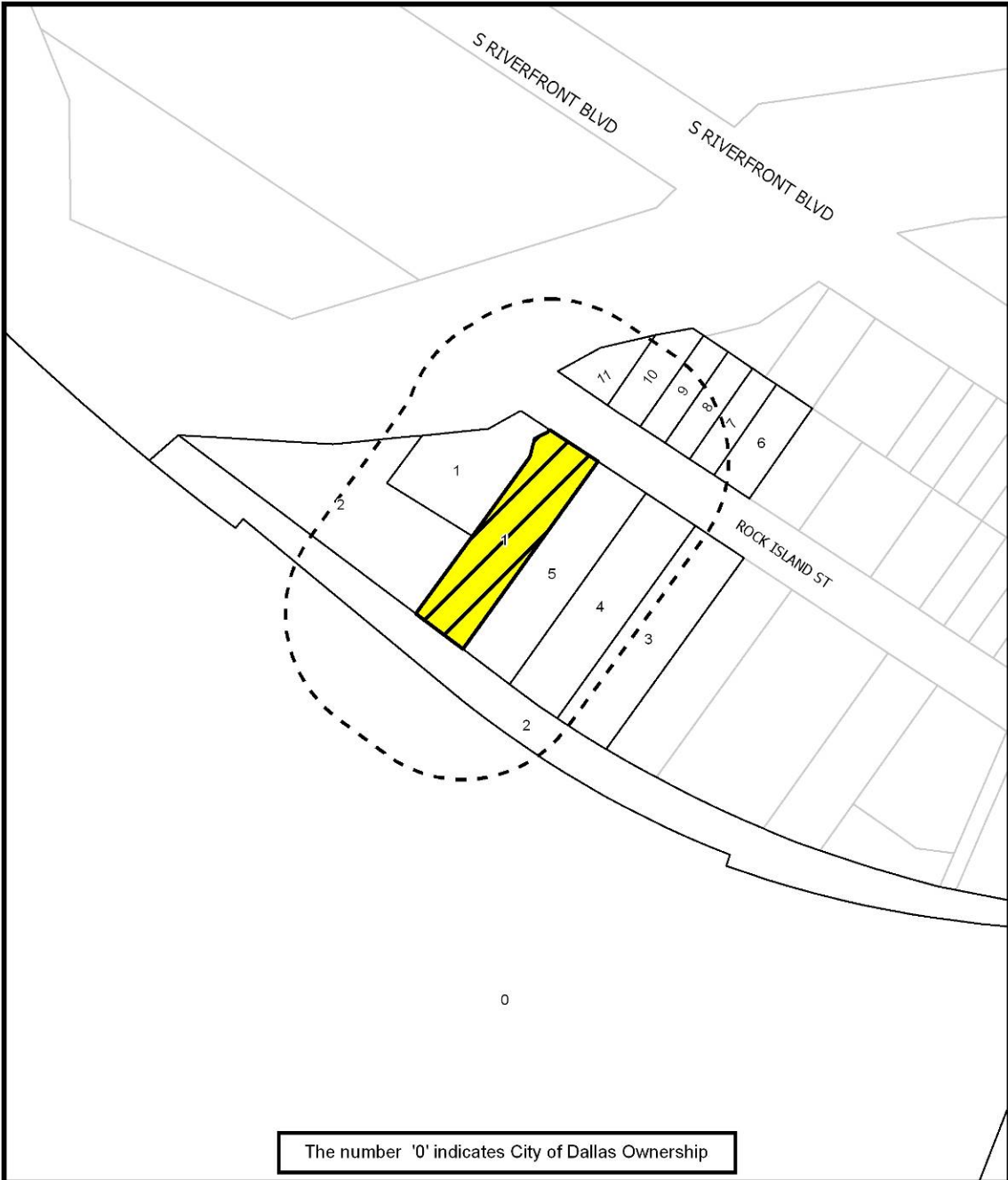
Attachments 3 & 4

No continuous piping goes into or thru Covered area "F". The pipeline ends as shown in Pictures 2, 4, 6 & 7. There are 2 x 2" pipelines under roof of Covered area "F" (see pics 1,3 & 5) and can only be used (1 line at a time) when connected to the pump by hose connecting at the end of pipeline to the pump & a hose connection from the pump to the pipeline (pic. 1 & 3)



6/





 1:2,400	NOTIFICATION		Case no: BDA101-068
	200' AREA OF NOTIFICATION 11 NUMBER OF PROPERTY OWNERS NOTIFIED		Date: 7/26/2012

Notification List of Property Owners

BDA101-068

11 Property Owners Notified

<i>Label #</i>	<i>Address</i>	<i>Owner</i>
1	1809 ROCK ISLAND ST	BUCKLEY OIL CO
2	101 CORINTH ST	DALLAS COUNTY FLOOD CONTROL DISTRICT
3	1815 ROCK ISLAND ST	JOHNSON DELMO LEON
4	1901 ROCK ISLAND ST	JOHNSON REALTY CO
5	1811 ROCK ISLAND ST	ROSEBUD HOLDINGS LLC
6	1824 ROCK ISLAND ST	SHERARD MARTHA M
7	1820 ROCK ISLAND ST	SHERARD SCOTT T
8	1812 ROCK ISLAND ST	SHERARD MILLIGAN F & MARCELLE MOUNT
9	1810 ROCK ISLAND ST	SHERARD MILLIGAN
10	1808 ROCK ISLAND ST	HML HOLDINGS LLC TEXAS LIMITED LIABILITY
11	1800 ROCK ISLAND ST	ROCKALONG LLC

FILE NUMBER: BDA 101-069

BUILDING OFFICIAL'S REPORT:

Application of Tommy Mann of Winstead, PC, to appeal the decision of the administrative official at 1809 Rock Island Street. This property is more fully described as Lot 15 and part of Lot 16 in City Block 73/ 7342 and is zoned PD-784, which requires that the building official deny an application for a certificate of occupancy if the building official determines that the certificate of occupancy would be issued on the basis of false, incomplete, or incorrect information; the use is being operated in violation of the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations. The applicant proposes to appeal the decision of an administrative official to deny an application for a certificate of occupancy.

LOCATION: 1809 Rock Island Street.

APPLICANT: Tommy Mann of Winstead, PC

REQUEST:

An appeal has been made requesting that the Board of Adjustment reverse/overtake the Building Official's May 18th decision (received by the applicant according to the board of adjustment application on May 20, 2011) to deny an application for a certificate of occupancy.

STANDARD FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:

Dallas Development Code Sections 51A-3.102(d)(1) and 51A-4.703(a)(2) state that any aggrieved person may appeal a decision of an administrative official when that decision concerns issues within the jurisdiction of the Board of Adjustment.

The Board of Adjustment may hear and decide an appeal that alleges error in a decision made by an administrative official. Tex. Local Gov't Code Section 211.009(a)(1).

Administrative official means that person within a city department having the final decision-making authority within the department relative to the zoning enforcement issue. Dallas Development Code Section 51A-4.703(a)(2).

BACKGROUND INFORMATION:

Zoning:

Site: PD 784 (Planned Development)

North: PD 784 (Planned Development)

South: PD 784 (Planned Development)
East: PD 784 (Planned Development)
West: PD 784 (Planned Development)

Land Use:

The subject site is developed with a petroleum product and wholesale use (Buckley Oil). The areas to the north and east appear to be developed with industrial/warehouse use; and the areas to the south and west appear to be undeveloped.

Zoning/BDA History:

1. BDA 101-068, Property at 1809 Rock Island Street (the subject site) On August 14, 2012, the Board of Adjustment Panel A conducted a hearing to consider an appeal made requesting that the Board of Adjustment reverse/overturn the Building Official's May 18, 2011 decision (received by the applicant according to the board of adjustment application on May 20, 2011) to) to revoke the existing certificate of occupancy for the property. The Board held this application under advisement until October 16, 2012.
2. BDA 101-070, Property at 1803 Rock Island Street (the property immediately north of the subject site) On August 14, 2012, the Board of Adjustment Panel A conducted a hearing to consider an appeal made requesting that the Board of Adjustment reverse/overturn the Building Official's May 18, 2011 decision (received by the applicant according to the board of adjustment application on May 20, 2011) to deny an application for a new certificate of occupancy. The Board held this application under advisement until October 16, 2012.

Timeline:

June 3, 2011: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

- June 22, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- June 23, 2011: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the August 1st deadline to submit additional evidence for staff to factor into their analysis; and the August 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the outline of procedure for appeals from decisions of the building official to the board of adjustment; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- July 28, 2011: The applicant requested postponement of the application from Panel A's August 16th hearing to Panel A's September 20th hearing.
- August 11, 2011: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the September 1st deadline to submit additional evidence for staff to factor into their analysis; and the September 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the outline of procedure for appeals from decisions of the building official to the board of adjustment; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- August 25, 2011: The applicant requested postponement of the application from Panel A's September 20th hearing to Panel A's October 18th hearing.
- September 26, 2011: The applicant requested postponement of the application from Panel A's October 18th hearing to Panel A's November 15th hearing.
- October 28, 2011: The applicant requested postponement of the application from Panel A's November 15th hearing to Panel A's January 17, 2012 hearing.
- December 17, 2011: The applicant requested postponement of the application from Panel A's January 17, 2012 hearing to Panel A's February 14, 2012 hearing.
- December 20, 2011: Application was postponed indefinitely.

- June 22, 2012: The applicant indicated that he was ready to proceed with this request.
- June 22, 2012: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the August 3rd deadline to submit additional evidence to be incorporated into the Board's docket materials; and
 - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- July 31, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, and the Assistant City Attorneys to the Board.
- August 3, 2012: The Assistant City Attorney assisting the Building Official on this application forwarded additional information to staff.
- August 3, 2012: The applicant forwarded additional information on this application to staff.
- August 14, 2012: The Board of Adjustment Panel A conducted a hearing to consider an appeal has been made requesting that the Board of Adjustment reverse/overturn the Building Official's May 18th decision (received by the applicant according to the board of adjustment application on May 20, 2011) to deny an application for a certificate of occupancy.
- The following written documents were submitted at the August 14, 2012 briefing/public hearing in conjunction with BDA 101-068, BDA 101-069, and BDA 101-070:
1. The Assistant City Attorney assisting the Building Official submitted a document that included among other things a "summary of issues under consideration" (see Attachment A).
 2. The Assistant City Attorney assisting the Building Official submitted a copy of a Certificate of Occupancy for property located at 1809 Rock Island Street dated 11/16/2001" (see Attachment C).
 3. The Assistant City Attorney assisting the Board of Adjustment submitted copies of portions of Section 306 of the Chapter 52 of the Dallas City Code (see Attachment B).
 4. The applicant submitted a document entitled "Linda Henry Testimony" (see Attachment D).

5. The applicant submitted a document entitled "Olen Ray Long Testimony" (see Attachment E).

The Assistant City Attorney assisting the Building Official and the applicant submitted paper copies of their power point show presented at the August 14th hearing. Copies of these power point shows have been placed in the case files and are available for review upon request.

The Board held this application under advisement until October 16, 2012.

August 21, 2012: The Board Administrator wrote the applicant a letter that conveyed the board's action on this appeal and the October 5th deadline to submit any additional information that he would want to be incorporated into the board's October docket.

October 2, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Building Inspection Senior Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

October 5, 2012: The applicant forwarded additional information on this application and BDA 101-068 and BDA 101-069 to staff (see Attachment F).

GENERAL FACTS/STAFF ANALYSIS:

- The Building Official's May 18, 2011 letter to Arthur Anderson of Winstead, P.C. regarding "Denial of certificate of occupancy application nos. 100802063 and 1008021064 ("the applications") for a petroleum product storage and wholesale use at 1803 and 1809 Rock Island Street ("the Properties") owned by Buckley Oil Company ("Buckley Oil")" is included in this case report. The letter states among other things that:
 1. The applications for the Properties are denied and any use operating on the Properties without a certificate of occupancy is an illegal land use that must immediately cease operating.
 2. The building official is required to deny an application for a certificate of occupancy if the building official determines that the certificate of occupancy requested does not comply with code, and that past inspections of the Properties by the Fire Department have revealed many different Fire and Construction Code violations which have not been corrected.

3. The building official is required to deny an application for a certificate of occupancy if the building official determines that the application contains false, incomplete, or incorrect information and that the applicant has failed to correct or supplement the false, incomplete, or incorrect information within a reasonable time after the building official requests that the information be corrected or supplemented.
 4. The building official shall deny an application for a certificate of occupancy if the building official determines that the applicant does not possess a required city license, permit, or registration to operate the use or occupancy. Past inspections of the Properties by the Fire Department have revealed that Buckley Oil does not possess required city permits.
- On August 3, 2012, Assistant City Attorney Andrew M. Gilbert who is assisting the Building Official submitted a notebook of information (and disc) entitled "Appeal to Board of Adjustment RE: BDA 101-068, 101-069, & 101-070, Properties Located at 1803, 1809, and 1811 Rock Island St. City of Dallas' Exhibits 1 through 43." (A cover memo attached stated that "by copy of this letter, a copy of same is being delivered to counsel of record." In addition, discs of this information were mailed to the board members and a copy of the notebook was hand-delivered to the Assistant City Attorney to the Board of Adjustment).
 - On August 3, 2012, Arthur J. Anderson of Winstead (the applicant) submitted information related to BDA 101—068, 069, and 070. (Discs of this information were mailed to the board members and mailed and/or hand-delivered to the Assistant City Attorney assisting the Building Official and the Assistant City Attorney to the Board of Adjustment).
 - If the Board of Adjustment upholds the Building Official's May 18, 2011 decision, the application for a certificate of occupancy on the property located at 1809 Rock Island Street will remain denied.
 - If the Board of Adjustment overturns/reverses the Building Official's May 18, 2011 decision, the application for a certificate of occupancy on the property located at 1809 Rock Island Street will be approved.

BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2012

APPEARING IN FAVOR: Art Anderson, 1201 Elm St., Dallas, TX

APPEARING IN OPPOSITION: No one

APPEARING FOR THE CITY: Andrew Gilbert, CAO, 1500 Marilla, 5DN, Dallas, TX

MOTION #1: Hounsel

I move that the Board of Adjustment in Appeal No. **BDA 101-069** suspend the rules and accept the evidence that is being presented today by the applicant.

SECONDED: Schweitzer

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #2: Agnich

I move that the Board of Adjustment in Appeal No. **BDA 101-069** suspend the rules and accept the evidence that is being presented today by the city.

SECONDED: Hounsel

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #3: Nolen

I move that the Board of Adjustment in Appeal No. **BDA 101-069** suspend the rules and accept the evidence that is being presented today by the city.

SECONDED: Agnich

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

Break: 2:07 P.M.

Resumed: 2:17 P.M.

MOTION#4: Schweitzer

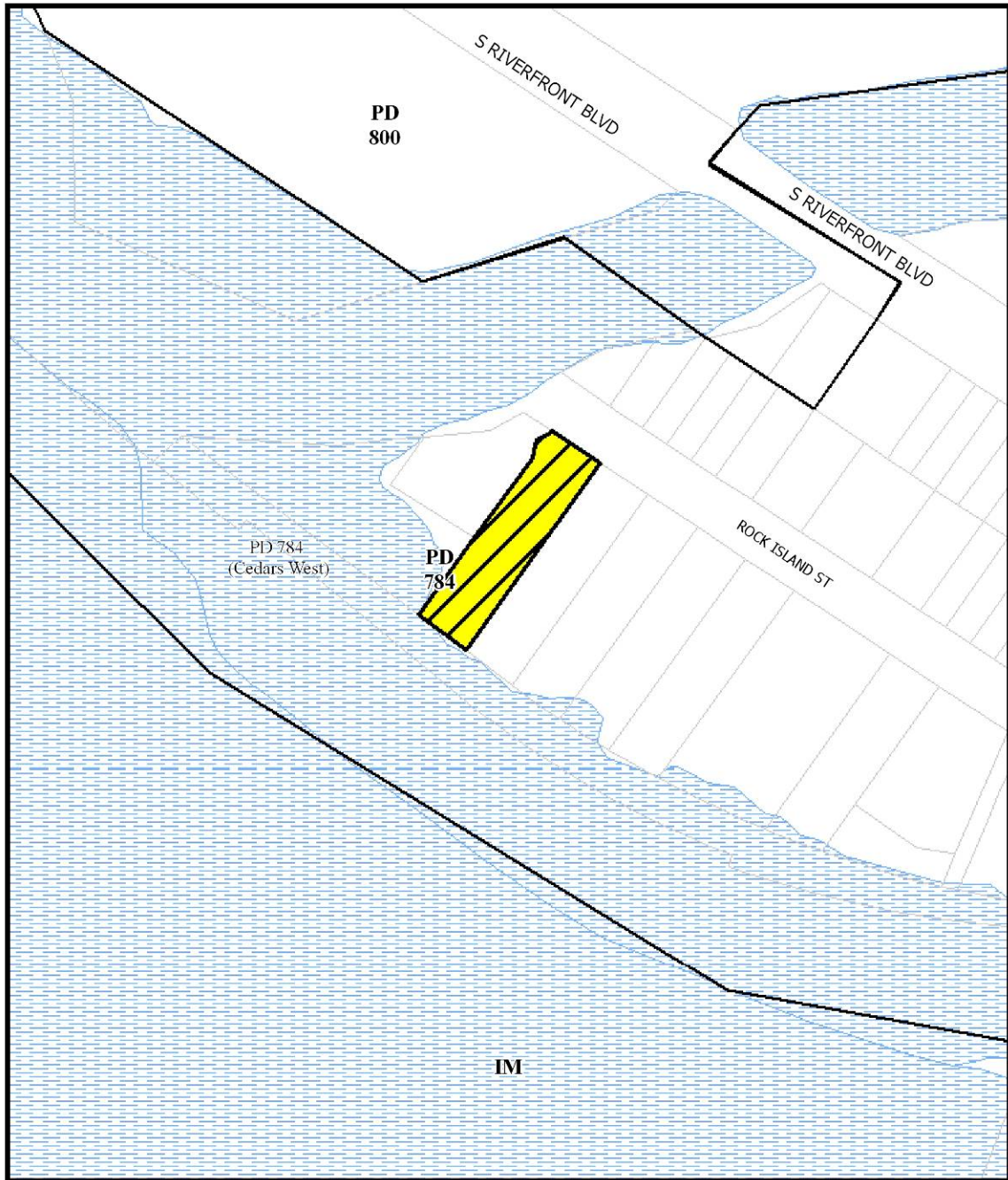
I move that the Board of Adjustment in Appeal No. **BDA 101-069**, hold this matter under advisement until **October 16, 2012**.

SECONDED: Agnich

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

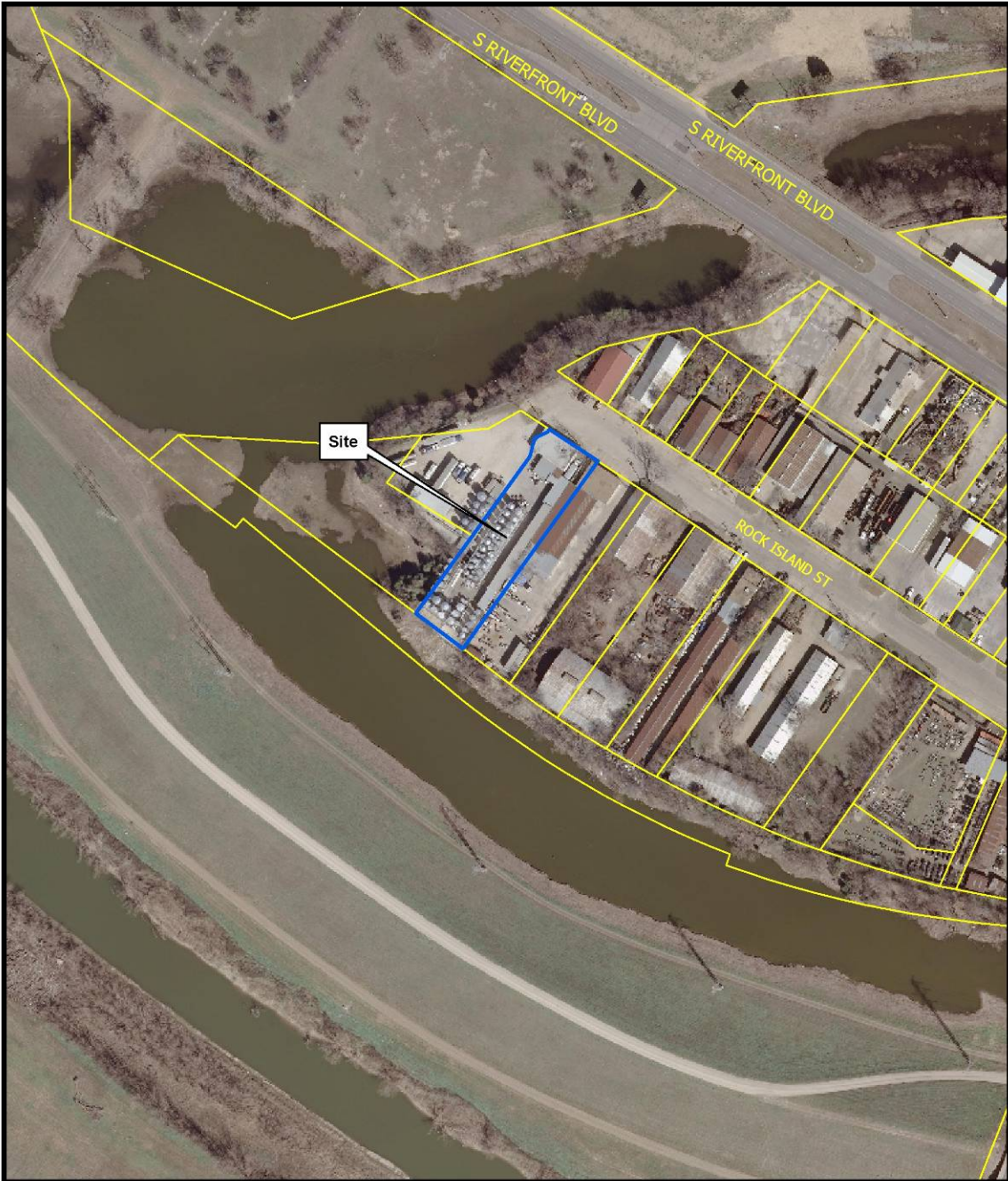


1:2,400

ZONING MAP

Case no: **BDA101-069**

Date: **7/26/2012**



1:2,400

AERIAL MAP

Case no: BDA101-069

Date: 7/26/2012



~~BDA~~ BDA 101-068, 069, 070
Submitted by
Andrew Gilbert
at the 8-14-12
briefing SK

8-14-12

August 14, 2012

City of Dallas Board of Adjustment, Panel A
1500 Marilla, 5BN
Dallas, Texas 75201

Via Hand-Delivery

Attach A
pg 1

RE: Properties at 1803 and 1809 Rock Island Street (the "Properties") owned by Buckley Oil Company ("Buckley"); BDA 101-068, 101-069, and 101-070

Dear Panel Members:

This letter responds to the letter sent to you by Art Anderson on August 3, 2012. Buckley's Properties have multiple serious violations of the Dallas City Code. The Dallas Fire Department has determined the Properties present a substantial danger of injury to the public. There are no permits for the vast number of storage tanks for flammable and combustible liquids installed on the Properties since 1957, and for other hazardous operations. The City's Exhibit 30 is the only approved permit for above-ground storage tanks on the Properties, and it authorizes the 21 tanks that were installed in 1957.¹ By comparing the City's Exhibits 1-12, the Board can see that the number of tanks at the Properties has almost quadrupled in the years since 1957. Specifically, by comparing the City's Exhibits 2, 4, and 12, the Board can see the number of tanks roughly double from 1962 to 1985, and double again from 1985 to 2011. Through the years, the City has attempted to work amicably with Buckley to achieve compliance with the Code, which would considerably reduce the dangers on the Properties. The efforts have been unsuccessful because Buckley does not wish to incur the expense of complying.

Summary of issues under consideration²

There are only two issues for the Board to consider: (1) did the building official properly deny Buckley's application #1008021063 and #1008021064 for a certificate of occupancy ("CO"); and (2) did the building official properly revoke CO #0110101005 (attached as Exhibit "A") for 1809 Rock Island. The City Code provides the building official shall deny a CO if a property owner does not comply with the codes,³ if the application contains false or incomplete information,⁴ or if the applicant does not possess a required city permit to operate the use.⁵ The City Code further provides the building official shall revoke a CO if Buckley's operation presents a substantial danger of injury or adverse health impact to any person or property and is in violation of the law.⁶ Anderson's letter wrongly states that the building official can *only*

¹ City's Exhibit 30

² The City agrees that Buckley has a CO for a warehouse use on 1811 Rock Island. There were no actions taken by the building official concerning 1811 Rock Island that are the subject of Buckley's appeal.

³ Dallas City Code, Chapter 52, § 306.5(1)

⁴ Dallas City Code, Chapter 52, § 306.5(3)

⁵ Dallas City Code, Chapter 52, § 306.5(4)

⁶ Dallas City Code, Chapter 52, § 306.13(3)

revoke if the facilities are a substantial danger. The City Code also provides the building official may revoke a CO if a required permit has not been issued, has been revoked, or expired.⁷

The building official properly denied the certificate of occupancy for 1803 Rock Island

There is no CO for 1803 Rock Island Street. Buckley’s misunderstanding has created confusion regarding the correct address for 1803 Rock Island. While Buckley may have purchased the Properties together, they are all separately platted with separate addresses and there is no dispute that 1803 is a separate property (or “tract”) requiring a separate CO. In fact, Buckley’s warranty deed shows the two tracts as separate lots. Buckley has never had a CO for any use for 1803 Rock Island.

Buckley alleges that there was a “clerical error” in failing to issue a CO for 1803 Rock Island when it applied for one at 1809 in 2001. There was no clerical error and Buckley’s time to appeal any determination from 2001 has expired.⁸ First, if Buckley applied using the wrong address, then it is not the City’s error. Second, no CO was ever issued for more than 21 tanks at 1809 Rock Island. Third, Buckley later applied for a CO for a petroleum product storage and wholesale use at 1803 Rock Island on March 17, 2008. Buckley did not request an inspection before the 120th day after the application was filed. The CO application for the petroleum product storage and wholesale use therefore expired and was void *ab initio*.⁹ The City did not make an error by not issuing a CO for 1803 Rock Island.

Buckley wrongly claims that it obtained a permit to construct seven tanks at 1803 in 2001. Buckley was preliminarily issued a permit to construct seven tanks at the location it described as 1809 Rock Island, with the note that the fire department must first approve and that Buckley must first obtain a CO. (COD 521) The tanks were placed on 1803 Rock Island without the Fire Department’s approval and without any CO. Buckley never requested any inspections, the City red-tagged the permit and it expired.

The building official properly revoked the certificate of occupancy for 1809 Rock Island

The building official properly revoked the CO for 1809 Rock Island (attached hereto as Exhibit “A”). The CO for 1809 Rock Island was updated to add the petroleum product storage and wholesale use with a note that only the original 21 storage tanks were permitted.¹⁰

Buckley fails to squarely address the issue of permits for its aboveground storage tanks. Buckley vaguely claims that “numerous tanks were installed in the 1957 timeframe.” Buckley’s owner R.E. Dodson, and paid consultant, Olen Long, have previously claimed that “**All tanks except seven were installed in 1957,**” when the photos of the Properties reveal otherwise. (City’s Exhibits 1-12)

Additionally, Buckley tries to blame the City for bad recordkeeping. The City believes its fire and building permit records for the Properties are complete, and that no documents are missing

⁷ Dallas City Code, Chapter 52, § 306.13(5)

⁸ Dallas City Code, Chapter 52, § 306.15

⁹ Dallas City Code, Chapter 52, § 306.4.2

¹⁰ See City’s Exhibit 16; City’s Exhibit 19, p. 12 (confirming the City has updated Buckley Oil’s certificate of occupancy)

or misplaced. Also, both the 1991 Fire Code and the 2006 Fire Code require Buckley Oil to maintain all permits.¹¹ Since the number of tanks at Buckley's properties has almost quadrupled since 1957, it defies logic that the City would have the oldest permit and not any newer permits. For Buckley to be correct, the City would have to "misplace" permits for approximately 60 tanks that have been installed, moved, and/or removed over the course of 55 years.

Buckley failed to provide requested information

Buckley refers to certain bases for revocation as "hypertechnical defect complaints." However, since Buckley failed to respond to the building official's request, the building official properly revoked the CO. Buckley contends that it provided all information on the City's CO checklist. However, the City Code provides the building official may request additional information.¹² Buckley's response was deficient.

Buckley Oil is in violation of the Fire Code at 1809 and 1803 Rock Island

If Buckley is violating the Fire Code, then the building official properly denied the CO applications for 1803 and 1809 Rock Island. Additionally, the building official properly revoked the CO for 1809 Rock Island if the Properties constitute a substantial danger to or required permits have not been issued. Chief Carlin's memo was not the only evidence of the violations or dangers.

As the record shows, the Properties have multiple serious violations of the Dallas Fire Code. In particular, failing to obtain a permit for storage, handling, or use of Class I, II, or IIIA liquids violates the Dallas Fire Code.¹³ In addition, failing to obtain acceptance tests for tanks being placed into service violates the Dallas Fire Code.¹⁴

There are many other violations of the Fire Code for which Buckley has been previously placed on notice.¹⁵ For example, the Fire Department has given numerous written notices to Buckley of fire code violations, including on January 10, 2003, January 17, 2003, April 15, 2003, August 31, 2007, January 7, 2009, February 19, 2009, and again on June 5, 2012.¹⁶ In addition, fire inspectors told Buckley about violations at other times. Before making any decisions at issue in this proceeding, the building official met with inspectors from the Fire Department on the dangers at the Properties. Considering the number, extent, and significance of all of the violations together, there is a substantial risk of injury on and near the Properties. *See also* City's Exhibit 29.

Buckley presents a substantial danger of injury to persons or property

The City's fire marshal and other fire inspectors have determined that Buckley presents a substantial danger of injury. Chief Carlin's memo is only one example. Buckley has the burden

¹¹ See 1991 Dallas Fire Code § 4.105; 2006 Dallas Fire Code § 107.2.1

¹² Dallas City Code, Chapter 52, § 306.3.1(5)

¹³ See Dallas Fire Code § 105.6.16

¹⁴ See Dallas Fire Code § 3404.2.12.1

¹⁵ See e.g. City's Exhibits 1-14, 19, 29, and 30-43

¹⁶ See Exhibits 29, 32-38

to show that the building official erred and that the Properties are in compliance.¹⁷ Buckley did not timely submit any direct evidence indicating that the facility is safe. Buckley claims that it does not present a substantial danger of injury. Yet, it only makes statements to the effect that “the City has presented no evidence,” and that “it must be presumed” that Buckley is safe because they have been operating “without incident” and have “received numerous permits.”

The City has not determined that Buckley’s Properties are safe. Inspections conducted by various city departments or other governmental agencies do not “condone” or “approve” of the condition of the Properties. Many of these inspections were conducted for reasons not mentioned by Buckley. For example, EPA and TCEQ do not inspect to verify compliance with the Fire Code or for permits. Also, the fact that Buckley might not have ever received a citation is no evidence that the Properties comply. Finally, all persons having dealings with a city are presumed to know its ordinances and are charged with notice of ordinance requirements.¹⁸

A. Buckley has unpermitted tanks containing flammable and combustible liquids.

Buckley says there is confusion regarding the City’s perception of the land areas identified by the addresses of 1803 and 1809 Rock Island, but fails to explain the significance. As Buckley should know, there is no confusion that it has unpermitted tanks and operations on both 1809 and 1803 Rock Island. (COD 458) Part of Buckley’s confusion appears to be due to it’s mistaken belief that 1803 Rock Island did not have a separate address from 1809 Rock Island.

By obtaining Building Permit No. 67069 dated March 27, 1957, Buckley Oil obtained a permit to install at most 21 storage tanks at 1809 Rock Island Street. Buckley states that it was not required to obtain permits for tanks that would not contain flammable liquids. First, Buckley *was* required to obtain permits for the other tanks that may have been installed in 1957. The 1951 Dallas Building Code required a building permit for *any* structure, including a storage tank. *See* 1951 Dallas Building Code § 201(A). Moreover, Buckley cannot show that all the additional tanks were installed in 1957, when they were clearly not.

Second, the Dallas Fire Code explicitly provides that the City can apply the Fire Code retroactively if the fire marshal determines that the existing structures, facilities, and conditions constitute a distinct hazard to life or property. *See* Dallas Fire Code § 102.1(4). Courts have also consistently held that fire code regulations can be applied retroactively.¹⁹

B. Buckley’s tanks are too close to each other inside inadequate diking.

Buckley says that its diking is sufficient to contain a spill. Even assuming that the tanks were all installed in 1957, the tanks are not spaced three feet from each other, as was required in 1957. However, the number of tanks has nearly quadrupled since 1957. The tanks are not spaced appropriately and some tanks have no clearance at all. Buckley’s consultant, Olen Long, submitted a diking plan to the City which was rejected because the design was flawed. (City’s Exhibits 32, 33, 40)

¹⁷ Dallas City Code, Chapter. 52, §306.15

¹⁸ *See, e.g., Board of Adjustment of City of San Antonio v. Nelson*, 577 S.W.2d 783, 786 (Tex. Civ. App.—San Antonio 1979, writ ref’d n.r.e)

¹⁹ *Queenside Hills Realty Co., Inc. v. SAXL*, 328 U.S. 80 (1946); *Pierce Oil Corporation v. City of Hope*, 248 U.S. 498 (1919); *Crazy Water Retirement Hotel v. State of Texas*, 54 S.W.3d 100 (Tex. App.—Eastland 2001, no pet.).

C. Buckley stores Class I and II liquids together in the same diked area.

Buckley states that it is not storing incompatible liquids in the same diked area. Class I and II liquids are being stored too closely in the same diked area.²⁰ Incompatible liquids cannot be stored together in the same, unapproved, diked area.²¹ The National Board of Fire Underwriters Standards cited by Buckley is a document that may have discussed fire safety standards in 1941. The number of tanks at the Properties has nearly quadrupled since the first tanks were installed in 1957.

D. Buckley has not provided a foam fire extinguishing system or equipment on the Properties.

Buckley admits it is in violation of the Fire Code by not having a foam fire extinguishing system. The Fire Code requires Buckley to provide and maintain foam fire protection for aboveground storage tanks that are less than 50 feet apart.²²

E. A fire at the Properties would likely be devastating.

The Dallas Fire Department remains concerned that, as a result of the storage tanks being too close to each other, if an accident occurred on the Properties, the vast majority of the tanks could explode, burn for days cause significant damage to the Properties, could result in the loss of life, and other damage. The fact that an arts festival took place in the area directly contradicts Buckley's claim that it is located in an isolated, heavy industrial area with very few people nearby. Buckley is located in a very populated area, near to other establishments that are open to the public.

The City requests that the Board sustain the decision of the building official and affirm the denial and revocation of the COs for 1803 and 1809 Rock Island Street.

Sincerely,



Andrew M. Gilbert
Senior Assistant City Attorney

Cc:

Via Hand-Delivery
Arthur J. Anderson
5400 Renaissance Tower
Dallas, Texas 75270

²⁰Dallas Fire Code § 3404.2.9.5.2

²¹Dallas Fire Code § 2703.9.8

²²Dallas Fire Code § 3404.2.9.1.1

SDA 101-068, 069, 070
Submitted by Bert
Vandenberg at the
8-14-12 briefing.
SAT

Attch B
P 91

304.9.2 Final. To be made after structure is completed. To pass final inspection, all zones of the system must comply with the submitted irrigation design and must comply with current code and local and state water conservation requirements. Building inspection must also be provided with a receipt of the required test report for the installed backflow prevention device. (Ord. 27107)

304.10 Other inspections. In addition to the called inspections specified in this section, the building official may make or require any other inspection of any construction work to ascertain compliance with the codes and other applicable city ordinances. (Ord. 26029; 27107)

304.11 Reinspection. For the purpose of determining compliance with Section 104.6, the building official may cause any structure to be reinspected. (Ord. 26029; 27107)

304.12 Periodic inspections. Where the concealment of work proceeds continuously, the building official shall schedule periodic inspections. (Ord. 26029; 27107)

SECTION 305 SPECIAL INSPECTIONS

305.1 General. Refer to Section 1704 of the *Dallas Building Code*, as amended. (Ord. 26029)

SECTION 306 CERTIFICATE OF OCCUPANCY

306.1 Use or occupancy. No structure or land shall be used or occupied, no change in the existing occupancy classification, zoning use, or the tenant or occupant of a structure or portion of a structure shall be made, and no floor area increases or decreases of any existing tenancy area of a structure shall be used or occupied, until the building official has issued a certificate of occupancy and a fee has been paid as required in Section 303 of this chapter.

Exception: No certificate of occupancy is required for single family uses, handicapped group dwelling unit uses, duplex uses, U occupancies accessory to single-family or duplex uses, and tenant changes to individual dwelling units in Group R, Division 2 apartment houses. (Ord. 26029; 26579; 27107)

306.2 Change in use or occupancy. A change in the character, use, or occupancy of a building shall not be made except as specified in Chapter 34 of the *Dallas Building Code*. (Ord. 26029; 26579)

306.3 Application for a certificate of occupancy.

306.3.1 Application requirements. A person seeking a certificate of occupancy shall submit an application to the building official on a form approved by the building official. The application must include the following information:

1. The name and address of the use or occupancy.

2. The name, address, and telephone number of the owner of the structure and land.
3. The name, address, and telephone number of the operator of the use or occupancy.
4. A description of the use or occupancy that will be operated.
5. Any other information, plans, diagrams, computations, specifications, or other data or supporting documents the building official deems necessary, including an affidavit containing a detailed description of the use or occupancy that will be operated, the goods or services offered or produced, the hours of operation, and whether a city, county, state, or federal license, permit, or registration is required to operate the use or occupancy. (Ord. 26579)

306.3.2 Establishment selling or serving alcoholic beverages. Any person applying for a certificate of occupancy for an establishment that will sell or serve alcoholic beverages as defined in the *Texas Alcoholic Beverage Code* shall file an affidavit with the building official stating whether the establishment that will derive less than 50 percent, 50 percent or more, or 75 percent or more of its gross quarterly (three-month) revenue from the sale or service of alcoholic beverages for on-premise consumption. Any person owning or operating an establishment that sells or serves alcoholic beverages shall, upon request, supply the building official, within 30 days of the date of the request, with all records needed to document the percentage of gross revenue on a quarterly (three-month) basis derived from the sale or service of alcoholic beverages, including all sales tax returns for the period filed with the Texas Comptroller of Public Accounts and all applications for a permit or license for the period filed with the Texas Alcoholic Beverage Commission. The building official may grant one extension of time for a period not to exceed 30 days upon good cause shown. (Ord. 26579)

306.4 Expiration of application.

306.4.1 Application submitted in conjunction with an application for a construction permit. An application for a certificate of occupancy that is submitted in conjunction with an application for a construction permit shall expire and be void *ab initio* if:

1. no action is taken by the applicant before the 30th day after the building official gives the applicant written notice that additional information, plans, diagrams, computations, specifications, or other data or supporting documents are necessary for issuance of the certificate of occupancy;
2. the application for the construction permit expires; or
3. the construction permit is issued but later expires or is revoked. (Ord. 26029; 26579)

306.4.2 Application not submitted in conjunction with an application for a construction permit. An application for a certificate of occupancy that is not submitted in conjunction with an application for a construction permit shall expire and be void *ab initio* if:

1. no inspection is requested by the applicant before the 120th day after the date of its filing unless one or more extensions are granted under Subsection 306.4.3, in which case the application shall be void *ab initio* if no inspection is requested by the applicant during the extended time period(s);
2. no action is taken by the applicant before the 30th day after the building official gives the applicant written notice that additional information, plans, diagrams, computations, specifications, or other data or supporting documents are necessary for issuance of the certificate of occupancy; or
3. no action is taken by the applicant before the 30th day after the building official gives the applicant written notice that corrections and a reinspection are necessary for issuance of the certificate of occupancy. (Ord. 26029; 26579)

306.4.3 Extensions of time. The building official may grant one or more extensions of time for periods not exceeding 120 days each for justifiable cause. If a request for extension is made by the applicant or the applicant's agent, the request must be in writing and made within the time period sought to be extended. (Ord. 26029; 26579)

306.5 Denial. The building official shall deny an application for a certificate of occupancy if the building official determines:

1. The certificate of occupancy requested does not comply with the codes, the *Dallas Development Code*, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations;
2. The information, plans, diagrams, computations, specifications, or other data or supporting documents submitted with the application clearly show that the use or occupancy will be operated in violation of the codes, the *Dallas Development Code*, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations;
3. The application contains false, incomplete, or incorrect information and the applicant has failed to correct or supplement the false, incomplete, or incorrect information within a reasonable time after the building official requests that the information be corrected or supplemented; or
4. The applicant does not possess a required city, county, state, or federal license, permit, or registration to operate the use or occupancy. (Ord. 26579)

306.6 Issuance. Unless the application for the certificate of occupancy has expired under Section 306.4 or has been denied under Section 306.5, the building official shall issue a certificate of occupancy after a complete application has been filed, a true and correct copy of any required city, county, state, or federal license, permit, or registration to operate has been provided to the building official, and every necessary inspection has been made to determine compliance with the codes, the *Dallas Development Code*, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations. (Ord. 26029; 26579)

306.7 Certificate of occupancy. A certificate of occupancy must contain the following information:

1. The address of the structure or land.
2. The name and address of the owner of the structure and land.
3. The name and address of the operator of the use or occupancy.
4. The use and occupancy, in accordance with the provisions of the *Dallas Building Code* or the *Dallas Existing Building Code*, whichever applies, and the *Dallas Development Code*.
5. The certificate of occupancy number.
6. The zoning district where the structure of land is located.
7. Identification of any required city, county, state, or federal license, permit, or registration to operate the use or occupancy. (Ord. 26029; 26579)

306.8 Partial certificate of occupancy. A partial certificate of occupancy may be issued by the building official for the use or occupancy of a portion of a structure prior to the completion of the entire structure. (Ord. 26029; 26579)

306.9 Temporary certificate of occupancy. A temporary certificate of occupancy may be issued by the building official for the temporary use or occupancy of a portion of a structure. The building official shall set a time period during which the temporary certificate of occupancy is valid. When the temporary certificate of occupancy expires, the holder must obtain a certificate of occupancy authorizing the use or occupancy or cease the use or occupancy. The building official may grant one or more extensions of the temporary certificate of occupancy for periods not to exceed 30 days. If a request for extension is made by the applicant or the applicant's agent, the request must be in writing and made within the time period sought to be extended. (Ord. 26029; 26579)

306.10 Posting. The certificate of occupancy shall be posted in a conspicuous place in the premises and shall not be removed except by the building official. (Ord. 26029; 26579)

306.11 Validity. The issuance of a certificate of occupancy does not grant any vested right or give authority to violate any provision of the codes, the *Dallas Development Code*, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations. Any certificate of occupancy presuming to give authority to violate any provision of the codes, the *Dallas Development Code*, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations shall be void *ab initio*. The issuance of a certificate of occupancy shall not prevent the building official from later requiring the correction of errors in any information, plans, diagrams, computations, specifications, or other data or supporting documents, or from preventing a use or occupancy in violation of the codes, the *Dallas Development Code*, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations. (Ord. 26029; 26579)

306.12 Voiding of certificate of occupancy.

306.12.1 Void *ab initio*. A certificate of occupancy shall be void *ab initio* if the use or occupancy authorized by that certificate of occupancy is not commenced before the 120th day after the date of its issuance unless one or more extensions are granted under Subsection 306.12.2, in which case the certificate of occupancy shall be void *ab initio* if the use or occupancy is not commenced during the extended time period(s). (Ord. 26029; 26579)

306.12.2 Extensions of time. The building official may grant one or more extensions of time for periods not exceeding 120 days each if the building official finds that circumstances beyond the control of the holder of the certificate of occupancy have prevented the use or occupancy from being commenced. If a request for extension is made by the applicant or the applicant's agent, the request must be in writing and made within the time period sought to be extended. (Ord. 26029; 26579)

306.12.3 Void. A certificate of occupancy shall be void if:

1. A specific use permit required by the *Dallas Development Code* to operate the use or occupancy expires; or
2. A compliance date for the use or occupancy set by ordinance or the board of adjustment in accordance with the *Dallas Development Code* has passed. (Ord. 26579)

306.13 Revocation of certificate of occupancy. The building official shall revoke a certificate of occupancy if the building official determines that:

1. the certificate of occupancy is issued in error;
2. the certificate of occupancy is issued on the basis of false, incomplete, or incorrect information supplied;

3. a use or occupancy is being operated in a manner that is a substantial danger of injury or an adverse health impact to any person or property and is in violation of the codes, the *Dallas Development Code*, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations;
4. the structure or portion of the structure is a substantial danger of injury or an adverse health impact to any person or property and is in violation of the codes, the *Dallas Development Code*, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations;
5. a required city, county, state, or federal license, permit, or registration to operate the use or occupancy has not been issued, has been revoked, or has expired;
6. the holder of the certificate of occupancy has refused, upon request, to supply the building official with records needed to document the percentage of gross revenue on a quarterly (three-month) basis derived from the sale or service of alcoholic beverages within the required time period; or
7. the use or occupancy authorized by the certificate of occupancy has been discontinued for six months or more. (Ord. 26029; 26579)

306.14 Written notice. Written notice of any action taken or determination made by the building official under this section must be given to the owner of the structure and land and to the operator of the use or occupancy at the address shown on the certificate of occupancy by certified mail with a five-day return receipt requested or by hand-delivery. Except when a compliance date has been set in accordance with the *Dallas Development Code*, the notice must state that the action taken or determination made by the building official is final unless appealed. The fact that the notice is returned undelivered or that the return receipt is not signed by the addressee shall not affect the validity of the notice. (Ord. 26579)

306.15 Appeal of actions and determinations. Any action taken or determination made by the building official under this section shall be final unless appealed as follows:

1. If the action taken or determination made was pursuant to the codes, an appeal must be made to the building inspection advisory, examining, and appeals board in accordance with Section 208 before the 15th day after written notice of the action taken or determination made is given in accordance with Section 306.14; or
2. Except as provided in Paragraph 3, if the action taken or determination made was pursuant to the *Dallas Development Code*, an appeal must be made to the board of adjustment in accordance with the *Dallas Development Code*.
3. A certificate of occupancy that is void because a compliance date for the use or occupancy set by ordinance or the board of adjustment in accordance with the *Dallas Development Code* has passed may not be appealed under this subsection. (Ord. 26029; 26579)



Certificate of Occupancy

City of Dallas

Address: 1809 ROCK ISLAND ST 75207 **Issued Date:** 11/16/2001

Owner: R E DODSON
001809 ROCK ISLAND ST DALLAS TX 75207

DBA: BUCKLEY OIL COMPANY

Land Use: (6379) OFFICE SHOWROOM/WAREHOUSE

C.O.#: 0110101005

Lot:	Block:	Zoning:	IM	PDD:	0	SUP:
Historic Dist:	Consrv Dist:	Pro Park:	0	Req Park:	0	Park Agrmt:
Dwlg Units:	Stories:	Occ Code:	B1	Lot Area:	0	Total Area:
Type Const:	Sprinkler:	Occ Load:		Alcohol:	N	Dance Floor:

Remarks: SAME USE
This CO includes a petroleum product storage and wholesale use with 21 tanks see building permit from 1957. This CO does not mean that the operator is in compliance with the Fire code and other city codes.

Zaida Basora

Zaida Basora, Building Official

BDA 101-068, 069, 070
submitted by Andrew Gilbert
at the
8-14-12
hearing

Attach C

This certificate shall be displayed on the above premises at all times.
Development Services Department | Building Inspection Division | 214/948-4480 | www.dallascityhall.com

BDA 101-068, 069, 070
Submitted by
Art Anderson at
the 8-14-12
hearing
Attach P pg 1

LINDA HENRY TESTIMONY

My name is Linda Henry. I am Vice President of Facility Compliance and Regulatory Affairs for all locations of Buckley Oil and have been a Hazardous Materials Technician and Specialist since 1993, I also have training as Safety Officer and Incident Command System all from Georgia Tech which is one of the top three rated HazMat schools in the U.S. My last certification was in December 2009. I'm also registered with FEMA Emergency Management Institute to serve in times of crisis. I've been involved with the chemical industry for over 35 years.

The petroleum business is a very highly regulated industry. Buckley is a bulk wholesale distributor and I have worked at the Dallas facility for almost 10 years. Part of my responsibilities include reporting to local, state and federal agencies. Other areas of responsibility include safety, health, environmental and regulatory compliance issues which extends to the Department of Homeland Security, Department of Transportation, Federal Motor Carrier Safety Administration, Texas Dept. of Public Safety-Motor Carrier Bureau. We are also a member of NACD or National Association of Chemical Distributors, which is recognized by the EPA. We are audited every three years by third party services to insure we are in compliance with all 45 sections of the audit. Buckley has passed every audit.

Buckley's Dallas facility has 30 employees and serves over 2000 businesses in the DFW area. Buckley has been honored by the Dallas Historical Society as one of the longest-running businesses in Dallas. I am proud to be a Buckley employee and am very proud of Buckley's track record as being a safe workplace. Our safety training and maintenance are continuous...they never stop. Buckley takes its responsibilities to maintain safe facilities and a safe truck fleet very seriously. Buckley is regulated by numerous federal and state agencies, as

Attach D
Pg 2

well as locally by the City of Dallas Public Works & Transportation-Storm Water Mgmt Div., Air Pollution Control Div.; Environmental & Health Services departments, including inspections from Dallas Fire Department both from Station #4 and the Education and Inspection Division. Our facility is inspected almost always annually by either the local station or the Education-Inspection division and numerous other times by a number of governmental entities. We produce at least six reports each year to various agencies and report monthly to the state and EPA. Buckley prides itself on being courteous toward City and other governmental employees and responsive to any concerns that are raised. I have personally met numerous times with DFD employees on-site and Buckley has cooperatively addressed any and all issues up until the City's recent attempts to terminate Buckley's business.

It is important to understand the two primary types of materials stored at Buckley's facility. They are typically petroleum based motor-lube oils or petroleum based solvents. Different types of liquids have different flashpoints which designate what class they would fall into and therefore are subject to different standards or categories of fire hazard rating. For example, many of our tanks contain motor or engine oils, and lubes which would be of the same type used in your personal vehicle. These varying lubricants and transmission fluids are considered combustible products and don't have an explosive nature as such. A flammable liquid is more volatile. When the original tanks were installed at 1809, all of the tanks **were not** required to obtain permits under the Fire Code in effect at that time. The City's 1957 building permit authorized the installation of 21 tanks for flammable liquids. The City did not require permits for the numerous tanks that were installed to hold combustibles like lube oils and the like. That's the reason the 1958 and 1962 aerials show significantly more than 21 tanks on the property.

The City's attempts to shut down Buckley's business started around 2008 when the City began rezoning lands along the Trinity River for high-rise condominiums and mixed-use commercial

Attach D
B3

developments. Then came the recession and the City's interest was not as great. In fact, the City offered to look for alternative sites for Buckley to relocate. Now as real estate development activity in this area has picked up the City revoked our CO and wants us to shut down. The City revoked its offer to find alternative sites to relocate. They state there is no alternative site to relocate to.

As the Buckley employee with the responsibility for governmental compliance and safety, I am offended by the building official's and Assistant Chief Carlin's statements that Buckley's use is being operated in a manner that is a substantial danger of injury or an adverse health impact to any person or property and is in violation of the codes, the Dallas Development Code, or other city ordinances, rules or regulations. We have an excellent operations record and there is no basis for Chief Carlin's claim. Buckley has never had an incident for 55 years. Its track record speaks for itself. Why is Buckley a danger when it has never received a citation and never had a serious incident at the facility?

DFD inspects Buckley at least annually. All of our tanks are above-ground and easily visible. Why is Buckley suddenly a public danger today when it passed 50 years of annual inspections and other agency audits and site inspections?

On June 20, 2012, there was an arts festival held on Rock Island Street. Rock Island runs in front of Buckley's property. I attended the arts festival and saw 100's of spectators, including current and former councilmembers. How could Buckley be considered a public danger when the City of Dallas sponsored a festival with people milling and cars parked in front of Buckley's facility?

Attach D
P54

In 2011 and 2012, representatives of the TCEQ, Dallas' Public Works Management Department and Dallas Environmental and Health Services all inspected Buckley at the request of DFD. None of these agencies found that Buckley posed a risk to persons or property. How can Buckley be considered a public danger when every impartial agency with oversight of Buckley's operations has determined that there is no danger?

I have assisted in preparing numerous building permit and certificate of occupancy applications. The materials submitted to the City in 2010 and 2011 meet all of the requirements for a CO application and are more extensive and detailed than any CO application Buckley has ever submitted. There is no question as to what Buckley was requesting with its CO application, and we request that the Board reverse the building official's decision to deny our CO applications.

I specifically object to the following reasons for denying Buckley's CO application contained in the City's July 18, 2011 letter:

(a) Outlines of fire lanes: The property was developed when there were no fire lane requirements. There is no reason to show fire lanes for a built-out site. We discussed this issue with staff and they indicated they understood showing fire lanes was illogical.

(b) Height of Building One: Building One is not located on 1803 or 1809. The height was addressed on the site plan with the CO.

(c) Sufficient information to categorize the use of buildings: Attachment 5 to the CO application shows this information. The City never asked for additional information during the six months they held the application.

(d) Sufficient information to determine whether mixing and/or dispensing operation in Buildings 3C and F: Attachment 2 to the CO application addressed this issue. In addition, the Tier II report in the possession of the Fire Department.

A Hazel D
PSS

(e) The length of the piping that enters and terminates in Building F: The City's September 23, 2010 letter did not request this information. More importantly, none of the piping enters Building F.

The City building official should not have denied the CO application for 1809 and 1803. In addition, there is no question that the 2001 CO contained a clerical mistake and should have referenced both 1809 and 1803 Rock Island. Buckley requests that the City reverse the building official's revocation of Buckley's CO and to expand the 2001 CO to include 1809 and 1803 Rock Island.

submitted by Art
Anderson at the
8-14-12 hearing
Atch E p 1

OLEN RAY LONG TESTIMONY

My name is Olen Long and I am a professional engineer licensed by the State of Texas, license #93105 in Civil and Mechanical Engineering. I am the President of Long Engineering & Environmental Inc.

Buckley has been a client of mine since 2001. I have consulted for approximately 10 facilities like Buckley's. I signed an affidavit that is in the record, and the statements in the affidavit are true and correct. In 2003, I was asked by R.E Dodson to obtain development permits and any other historical documents that were in the City's files related to 1803-11 Rock Island Street. None of the City departments could find any permits. I personally went down to the permit section and asked if I could go through the microfiche files and they allowed me to do so. I found misfiled the original building permit and CO from 1957. If not for my efforts, it is unlikely that the 1950's permits would ever have been discovered. The City, because it is a large bureaucracy with millions of pages to document, naturally makes mistakes and destroys and misplaces documents several decades old. There are likely other permit approvals for Buckley's facility that the City has not found.

Exhibits 29, 32, 33 and 40 of the City's packet address the dikes located at 1803 and 1809. A dike is the concrete wall around the tanks. The purpose of the dike is to control potential spills. The dikes that are located on the Property meet the code requirements at the time they were built. These same dikes have been used to control spills under the state and local stormwater containment requirements. These dikes were approved by the TCEQ (Texas Commission on Environmental Quality) which has jurisdiction on stormwater runoff issues. My opinion is substantiated in the Industrial Inspection Report by the City's Daniel Cavazos on May 23, 2012 where he states on page 85 of Buckley's packet that "the site is totally contained and does not

discharge” and the “site looks good and there are no issues.” The Fire Department statements that the dikes are not permitted or are unsafe is incorrect.

I have also reviewed Exhibits 27, 28, 29, 42 and 43 of the City’s packet. The City incorrectly identifies the Dallas ordinances that apply to Buckley’s facilities as the current codes. I have addressed this issue in several Texas cities and they always apply the Codes in effect at the time of initial permitting, not today’s codes. For example, in 1957 the City did not require tanks with nonflammable fluids such as lube oils to be permitted and inspected. The 1958 and 1962 aerials show that the tanks installed at 1809 Rock Island in 1957 had City of Dallas approval. These tanks would not meet today’s ordinance requirements but they are still legal. Buckley complies with the applicable and relevant rules and regulations.

Finally, I strongly disagree with the statement in the City’s letters that Buckley’s “use or occupancy is being operated in a manner that is a substantial danger of injury or an adverse health impact to any person or property, and is in violation of the Codes, the Dallas Development Code, or other City ordinances, rules or regulations.” Linda Henry runs an excellent facility, and Buckley is one of the best run facilities of its type. There is always a chance, however slight, that an incident might occur. In addition to my personal observation, the fact that no significant incident has occurred over the last 55 years and the fact that the City has annually inspected Buckley clearly shows that the facility does not present a “substantial danger of injury or an adverse health impact to any person or property.”

Thank you for listening to my testimony.

5400 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270

214.745.5400 OFFICE
214.745.5390 FAX
winstead.com

October 5, 2012

ARTHUR J. ANDERSON
direct dial: 214.745.5745
aanderson@winstead.com

VIA HAND DELIVERY

City of Dallas
Board of Adjustment, Panel A
1500 Marilla, 5BN
Dallas, TX 75201

Re: ZBA ## 168, 169, 170 ("Appeals")

Dear Board members:

This letter responds to the letter hand-delivered to you by Andrew Gilbert at the August 14, 2012 briefing. Contrary to Mr. Gilbert's statements, Buckley's property does not have multiple serious violations of the Dallas City Codes and does not present a "substantial danger of injury to the public." The following statements in Mr. Gilbert's letter are in error:

PAGE 1

1. "The City's Exhibit 30 is the only approved permit for the above-ground storage tanks on the property." In addition to the 1957 permit, the City approved a permit to install seven tanks at 1803 Rock Island in 2001. (See attached Exhibit A and City's Exhibit 30). The installation was signed off and approved by the Fire Department's LaTonya Webster, and the City of Dallas had no issues with the installation of these tanks. Despite the fact there was no pressure testing of the lines after their installation, there have been no operational issues with the pipes or tanks installed at 1803 Rock Island. These lines are inspected on an annual basis.

2. "(The 1957 permit) authorizes (only) the 21 tanks that were installed in 1957." This statement is erroneous in two ways. First, the 1957 permit authorized more than 21 tanks. According to the City of Dallas Building Inspector's April 4, 1957 memo, the City building and fire department officials approved the installation of 21 tanks with "flammable liquids." Additional tanks with lube oils were allowed to be installed and not tested or shown on the site plan. Second, more than 21 tanks were installed from 1957-68. The City Attorney's depiction of 21 tanks with white circles is simply an inaccurate depiction. The attached Exhibit B is an enhanced version of the City's 1962 aerial photograph and it shows significantly more than 21 tanks on the properties at that time. Subsequent statements by the city attorney that the number of tanks increased four-fold from 1962-2011 are incorrect.

3. “Through the years, the City has attempted to work amicably with Buckley to achieve compliance with the Code, which would considerably reduce the dangers on the Properties. The efforts have been unsuccessful because Buckley does not wish to incur the expense of complying.” The correspondence in the record does not appear to be amicable on the City's behalf. An amicable resolution has not been achieved because the Fire Department is acting unreasonably by demanding that Buckley meet today's Code requirements and remove its tanks to achieve “compliance”. Buckley will be unable to continue its business operations with the small number of tanks demanded by DFD, and there is no ability to add more land to the operation. Attached as Exhibit C is a copy of Chief Marsh's August 2, 2010 e-mail which contains the following sentence: “If Buckley Oil is unable to meet code requirements in its current location because there is not enough land to add more diked areas and not enough money to add foam extinguishing system, then relocating to a larger site would be the best option.” Buckley's offers to reach a mutually agreeable, reasonable resolution other than a forced relocation were rejected by the City. In fact, the City withdrew its previous offer to find land for Buckley to relocate.

4. “Anderson's letter wrongly states that the building official can only revoke if the facilities are a substantial danger. The City Code also provides the building official may revoke a CO if a required permit has not been issued, has been revoked, or expired.” The City Attorney is correct that § 306 of the Code allows the building official to revoke a CO for various reasons. But the May 18, 2011 letter by the building official revoked the CO for 1803 for two reasons. First, under § 306.13.4, the official must show that a “structure” as opposed to a use must be a substantial danger of injury and must violate city codes. By annually inspecting and allowing Buckley's use to continue for 55 years and approving numerous permits, the City admits that Buckley does not present a substantial danger of injury. Therefore § 306.13.4 does not apply. The May 18, 2011 revocation letter also contains a reference to § 306.13.5 which provides for a CO revocation if a required “city, county, state, or federal license, permit, or registration to operate the use or occupancy has not been issued, has been revoked, or has expired.” The May 18, 2011 revocation letter refers to a lack of permits for storage, handling or use of Class I, II or IIIA liquids and building permits for storage tanks. Buckley disputes it is in violation. Further, the City's amendment to the Fire Code attached as Exhibit D does not require an operational permit for these liquids. Therefore the “use or occupancy” provision is not met. Further, Buckley submits a report every year stating the type of liquids in every tank which addresses the City's concerns. Further, § 301.1.1 only addresses the construction of structures. It is not a “license, permit or registration to operate the use or occupancy.” Even if Buckley does not have all of the building permits the City states it should have (which is in dispute), Buckley has all of the necessary operational permits which means that § 306.13.5 cannot apply. The CO therefore was wrongly revoked.

PAGE 2

5. “Buckley alleges that there was a ‘clerical error’ in failing to issue a CO for 1803 Rock Island when it applied for one in 1809 in 2001. There was no clerical error and Buckley's time to appeal any determination from 2001 has expired.” The City's statement is disingenuous and incorrect. The building permit application and site plan submitted to the City in 2001 showed the seven tanks to be located at 1803 Rock Island. Neither the City nor Buckley caught this mistake. LaTonya Webster of DFD approved the tank installation on March 12, 2001. The building permit attached as Exhibit E dated July 18, 2001, authorized the construction of permits at 1803 despite the reference to 1809 Rock Island. Attached as Exhibit F is the City form dated October 4, 2001 requiring Buckley to apply for a certificate of occupancy for the tanks installed on 1803. Attached as Exhibit G is the certificate of occupancy dated November 16, 2001 which references 1809, despite the fact that Buckley and the City knew that the tanks were installed at 1803. Both Buckley and the City share responsibility for this oversight which can be corrected by the Board to state that the CO applies to both 1803 and 1809.

6. "The tanks were placed on 1803 Rock Island without the Fire Department's approval and without any CO. Buckley never requested any inspections, the City red-tagged the permit and it expired." As shown in Exhibit A, the Fire Department's LaTonya Webster approved and signed off on the application to install the tanks at 1803. The failure to request inspections of the lines after construction was an oversight. However, the intent of the inspection provision has been met as there have been no leaks or spillage in the ten years of operation. Further, Buckley has never received any notice that the City red-tagged the permit which was approved and recorded in the City records. The only evidence is the City's Exhibit 31 which includes the handwritten note at the top of the page which states "Red tagged and withdrawn." There is no "red tag" and the statement is not verified by a signature or date.

7. "Additionally, Buckley tries to blame the City for bad recordkeeping. The City believes its fire and building permit records for the Property are complete, and that no documents are missing or misplaced." It's a fact that the City has historically misfiled approved permits for these properties which constitutes bad recordkeeping. As Olen Long stated in his affidavit which has been introduced, he was able to find permits which the City staff could not find because they were misplaced in the City files. The City does not dispute this statement. Without Buckley's diligent search, it is possible that nobody would have found these permits. Buckley recently asked the City if it could inspect the City's records to find additional misplaced permits, and the City refused Buckley's request. The City cannot claim that there is an absolute certainty that all of the permits have been produced when it knows there has been misfiling in the past and refuses Buckley's request to search City records to find additional permits.

8. "For Buckley to be correct, the City would have to 'misplace' permits for approximately 60 tanks that have been installed, moved, and/or removed over the course of 55 years." As noted above, the City's numerical calculation is all wrong. Second, as discussed above, it would not be surprising at all for the City to misplace these permits. What is more important and significant is the fact that the City inspected the facility virtually every year for decades and never perceived a problem with the number and location of the tanks. If the facility's tanks were not permitted and a danger, the City would have raised this issue decades ago. Further, there is suspicious evidence as to how the City has treated these permits. As stated above, Exhibit G is the copy of the CO for 1809 signed by Ray Wazny (building official at that time) which was given to Buckley on November 16, 2001. Attached as Exhibit H is a copy provided by the City of a different November 16, 2001 CO for 1809 which Buckley had not previously received. It includes a new note in the "Remarks" section and is signed by "Zaida Basora, Building Official." A significant issue with this document is that Ms. Basora was not the building official in 2001. She was the building official from 2008-10. How could Ms. Basora sign a certificate of occupancy issued in 2001?

PAGE 3

9. "Buckley contends that it provided all information on the City's CO checklist. However, the City Code provides the building official may request additional information. Buckley's response was deficient." Buckley acknowledges that a reasonable amount of additional information may be requested. But the requests must be restricted to issues related to the certificate of occupancy request. Ms. Antebi-Taylor's September 23, 2010 letter requesting additional information is attached as Exhibit I. Buckley satisfied most of these requirements. Virtually all businesses in Cedars West were required to obtain certificates of occupancy. The City requested perfunctory information from virtually all of the businesses other than Buckley. In addition, the building official required Buckley to provide information that was impossible to provide. For example, one of the requests in the September 23, 2010 letter was to show "fire lanes" on the properties. According to the Dallas Development Code, a fire lane must be at least 24 feet wide and meet certain radius requirements. Because the site was developed several decades ago, it is physically impossible to locate a fire lane on the site. The building official denied Buckley's CO application, in part, because a fire lane was not provided. While reasonable information can be requested

in the CO process, the City is not allowed to impose impossible conditions as a pretext to deny a CO. Furthermore, Buckley submitted a detailed revised site plan that addressed virtually all of the requested additional information in October 2010. The City received e-mails from Buckley's representative on December 5, 2010, January 4, 2011, March 4, 2011, and May 12, 2011 requesting status updates and asking if the City needed more information without a response. The City apparently was setting Buckley up to fail. After holding the revised CO application for seven months with absolutely no communication with Buckley, the City arbitrary and presumptively denied the CO applications on May 18, 2011.

10. "Buckley did not timely submit any direct evidence indicating that the facility is safe. Buckley claims that it does not present a substantial danger of injury." The direct evidence that the facility is safe is a 55 year track record of safety. The City annually inspected the facility for 55 years and never stated it was unsafe. The City has not met its obligation to prove Buckley operates an unsafe facility. Attached as Exhibit J is additional evidence of Buckley's 2012 certification by the National Association of Chemical Distributors, the premier organization for chemical distributors. Buckley has passed every three year NACD audit by independent third parties who verify Buckley's operation.

11. "There are many other violations of the Fire Code for which Buckley has been previously placed on notice. For example, the Fire Department was given numerous written notices to Buckley of fire code violations, including on January 10, 2003, January 17, 2003, April 15, 2003, August 31, 2007, January 7, 2009, February 19, 2009, and again on June 8, 2012." Here, the City is either intentionally or unintentionally being deceptive. At no time during the 55 years of operation has the City issued a notice of violation or citation to Buckley. Assuming that the City notified Buckley nine years ago that there were violations, then either they were minor in nature or the City must have considered them cured. Further, the "notices of violation" stated by the City refer to provisions in today's Fire Code, not the fire code in effect at the time of the initial permit for Buckley's project pursuant to Chapter 245, Tex. Loc. Gov't Code. According to § 245.002, the City of Dallas is prohibited from enforcing its fire code provisions enacted after the initial permit was filed by Buckley in 1957. There are exemptions to this prohibition as to certain fire code amendments in § 245.004, but these only apply to "a building or structure intended for human occupancy or habitation." Buckley's property is not intended for human occupancy or habitation, so the statutory prohibition against the City's enforcement stands. That being said, Buckley as a good corporate citizen has attempted to comply with all of the new feasible requirements requested by the City.

12. "The 1951 Dallas Building Code required a building permit for any structure, including a storage tank." The 1951 Code does not state that a building permit was required for tanks; it required building permits for structures. The Building Official's interpretation of the Code in 1957 was that tanks with lube oil were not required to obtain building permits.

13. "Courts have also consistently held that fire code regulations can be applied retroactively." There are no Texas court opinions which have held that code regulations can be applied retroactively to commercial uses. Further, the Texas Legislature has determined that a city cannot make these types of retroactive applications when it enacted Chapter 245, Tex. Loc. Gov't Code. The case law cited by the City Attorney does not apply to the facts in this case. For example, two of the opinions address water sprinklers in multi-family buildings. *Queenside Hills Realty Co v. SAXL*, 328 U.S. 80 (1946); *Crazy Water Retirement Hotel v. State of Texas*, 54 S.W.3d 100 (Tex. App.—Eastland 2001, no pet.). ("The record shows that the residents of the Hotel have an average age of 85 and that many of the residents have impaired mobility requiring wheelchairs and walkers."). Other than allowing retroactive application in these limited instances of multi-family buildings (consistent with the Chapter 245 statutory exception), there are no Texas court opinions supporting the City's position.

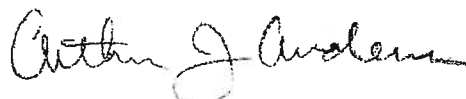
14. "Buckley's consultant, Olen Long, submitted a diking plan to the City which was rejected because the design was flawed." Buckley's diking plan meets the applicable Code requirements. Mr. Long, a licensed Texas engineer, has opined that the diking is adequate. Furthermore, City Exhibits 32 and 33 actually show that the diking plan for the 2001 tank installation was approved by DFD. LaTonya Webster's January 8, 2001 letter states that she "will not be able to approve the design of the diked area." Her follow-up March 12, 2001 letter omits the denial and simply states that she has "reviewed the plans submitted and the following comments have been made." On the building permit site plan attached as Exhibit A, Mr. Webster signed the document approving the diking system and the application to build.

15. "Incompatible liquids cannot be stored together in the same, unapproved, diked area." The Fire Code provisions cited by the City Attorney do not prohibit tanks with Class I and II liquids from being stored in the same area. Class III liquids are not stored with Class I and II liquids. The Code only prohibits corrosive and noncorrosive materials from being stored in the same area. Further, the diked area on the property meet all of the Code requirements in effect at the time they were constructed.

16. "Buckley admits that it is in violation of the Fire Code by not having a foam fire extinguisher system." Buckley admits that § 3404.2.9.1.1 of the Dallas Fire Code contains this provision. However, it does not apply to Buckley because its liquid surface area is less than 1,500 square feet which triggers the requirement. Further, this provision is not mandatory, and the City had not requested a foam system until recently. Finally, this provision was imposed after Buckley's project was constructed and is grandfathered from the foam requirement pursuant to Chapter 245.

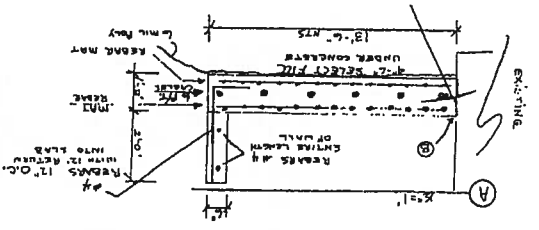
17. "The fact that an arts festival took place in the area directly contradicts Buckley's claim that it is located in an isolated, heavy industrial area with very few people nearby. Buckley is located in a very populated area, near to other establishments that are open to the public." The City's statement that Cedars West is a "very populated area" is nonsensical. Rock Island has industrial businesses historically allowed under the City's Industrial zoning. There are no single-family or multi-family residences in Cedars West. Stating that this is a very populated area is as accurate as the other statements in the City Attorney's letter. Further, to argue that the City's sponsorship of an arts festival on Rock Island for the first time in 55 years means there are large numbers of people who visit Rock Island Street is ludicrous.

Sincerely yours,



Arthur J. Anderson

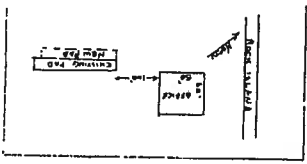
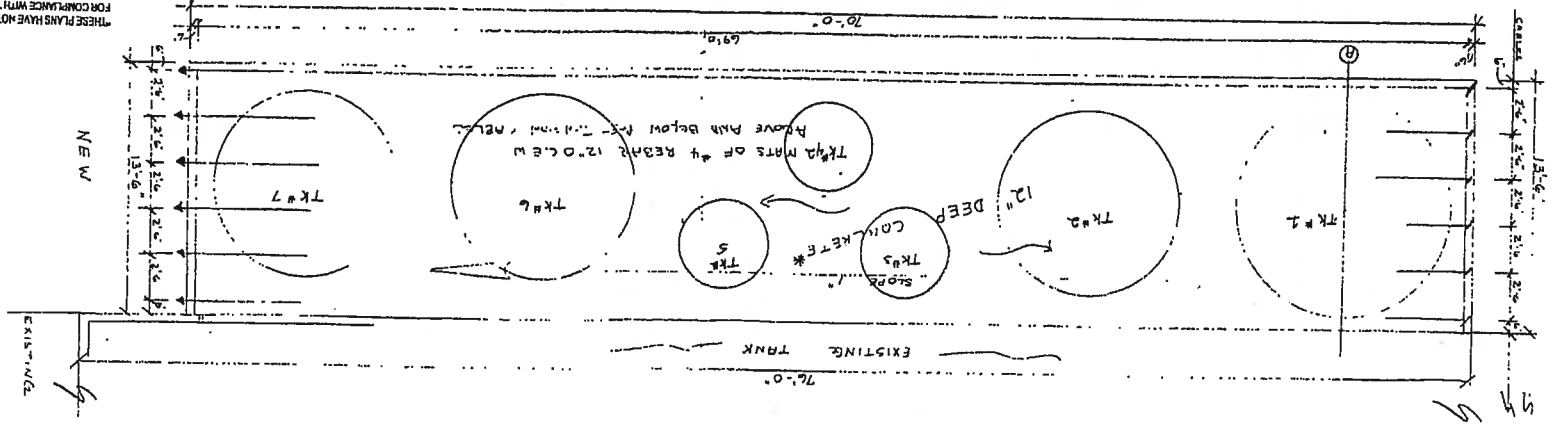
AJA/plg
Enclosures



REBAR WILL BE SPACED AS FOLLOWS:

REBAR #4	18" ON CENTER
REBAR #5	12" ON CENTER
REBAR #6	12" ON CENTER
REBAR #7	12" ON CENTER

FOR THIS CONCRETE STRENGTH DUE TO THE SOIL BEARING CAPACITY WILL BE 4000 PSI. THE SOIL BEARING CAPACITY WILL BE 4000 PSI. THE SOIL BEARING CAPACITY WILL BE 4000 PSI.



SUBMIT PLANS FOR APPROVAL TO:
DALLAS FIRE DEPARTMENT
2014 MAIN STREET, ROOM 408
DALLAS, TEXAS 75201

FOR ALL CONCRETE OVER A (8) IN THICKNESS, THE SOIL BEARING CAPACITY WILL BE 4000 PSI. THE SOIL BEARING CAPACITY WILL BE 4000 PSI.

THESE PLANS HAVE NOT BEEN REVIEWED
IN COMPLIANCE WITH THE CITY OF DALLAS
CONSTRUCTION CODES. ALL WORK PERFORMED
IS SUBJECT TO FIELD INSPECTORS APPROVAL.

0107181076
1 of 2

tabbles®

EXHIBIT

A

BDA 101-069

-200 SIEVE (CLAY)
1-30% PASSING
10%-40% PASSING
5-50% PASSING
ASTM D-98 THE
HE 500+ POUNDS
O F THE SP C TACTORS
STATE SINK RATIO
FEDD. ORIOUS GRAVELS

LT FILL, SOIL MOISTURE,
THE SELECT FILL,
FREE MOISTURE C/T

FOR THIS CONCRETE PENTHON, DUE TO THE SOIL BEARING CAPACITY WILL BE 2090 PSF DUE TO THE CURRENT CONDITION OF THE BA E. PRIOR TO POURING CONCRETE, THE SOIL BEARING CAPACITY MUST BE VERIFIED BY SOIL ACTION TESTING TO MEET AT LEAST PER ASTM D-698 STANDARD PROCTOR DENSITY AND THE SOIL MUST HAVE A SOCKET PENETROMETER READING OVER 3.0 PSI. THE SOIL MUST MEET THE CRITERIA FOR A STANDARD DEPTH OF 240 INCHES UNDER THE BASE OF THE CONCRETE SLAB. IT WILL BE BEST TO TEST THE SOIL BEFORE PLACING FORMS. OUR ALL CONCRETE OVER A 6) MIL POLY PLASTIC SHEET.

FOR COMPLIANCE WITH THE CITY OF DALLAS CONSTRUCTION CODES, ALL WORK PERFORMED IN CONJUNCTION WITH THESE PLANS IS SUBJECT TO FIELD INSPECTORS APPROVAL"

REVIEWED

DALLAS FIRE DEPARTMENT

SUBJECT TO APPROVAL OF
DATE 12-01-2014

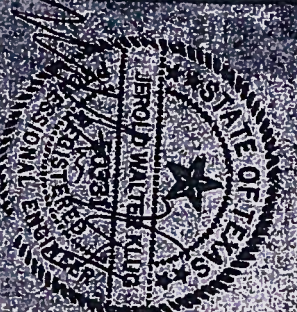
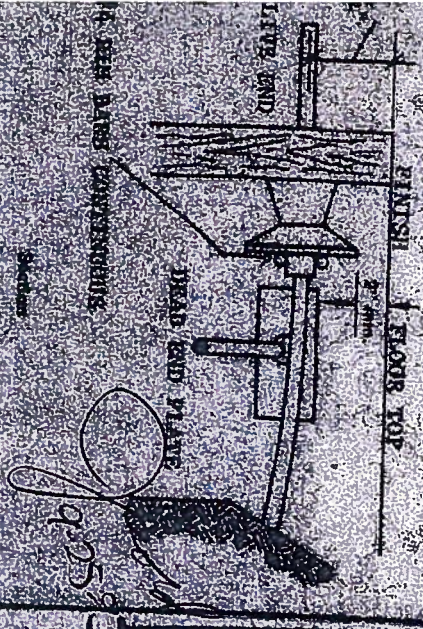
REVIEWED BY
SPECIFIC TO THIS PROJECT AND NOT BE
CONSISTENT WITH ANY OTHER PROJECTS

FINAL REVIEW BY
FIELD INSPECTOR

Flammable and Combustible Liquid storage and handling shall comply with Article #79 of the Dallas Fire Code.

PLANS 7-1, 7-2, 7-3 AND 7-4 OR 2" CABLE. LENGTH OF 30 0 PSI ALL FROM ASSUMED ELEVATION FROM CORNERS & FACES. TIED TO FORM BOARDS TO 1/2" (2-20# NAILS) FIXED TO THE FORM BOARD AND LIVE ANCHORS POINT TO END ANCHORS WORK IN PLACE DURING POUR. ANCHORS SHALL BE SUPPORTED BY BRACKETS. 100% PULL AFTER THE POUR.

6) MIL POLYETHYLENE UNDER ALL CONCRETE TO PREVENT CRACKING



Jerry King & Assoc
CIVIL ENGINEERS

FOUNDATION

STRUCTURAL STEEL ENGINEERING
PRESSURE VESSEL DESIGN
PILING FOR STEEL OR CONCRETE

THIS PLAN HAS BEEN PREPARED IN ACCORDANCE WITH THE SOIL REPORT AND WITH A GENERAL THE READING PROJECT. WE EXPRESSLY DENY ANY PARTICULAR LIABILITY OF A PARTICULAR DETERMINED BY THE OWNER AND SELLER OF ANY AND ALL SOIL DECISION MAKING PROJECTS.

THIS PROJECT HAS BEEN ASSIGNED TO JERRY KING, P.E. REGISTERED PROFESSIONAL ENGINEER AND DESIGNER. ALL FIELD AND FIELD MODIFICATIONS REQUIRED.

REPORT NO. 19-16-2014
PROJECT NAME: Buckleys Oil
ADDRESS: 10881
DATE: 12-01-2014

ALL OTHERS ARE TO BE KEPT FROM THE PROJECT SITE. ANY CHANGES TO THE PROJECT SHALL BE MADE BY THE ENGINEER. THE ENGINEER SHALL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF THE PROJECT.

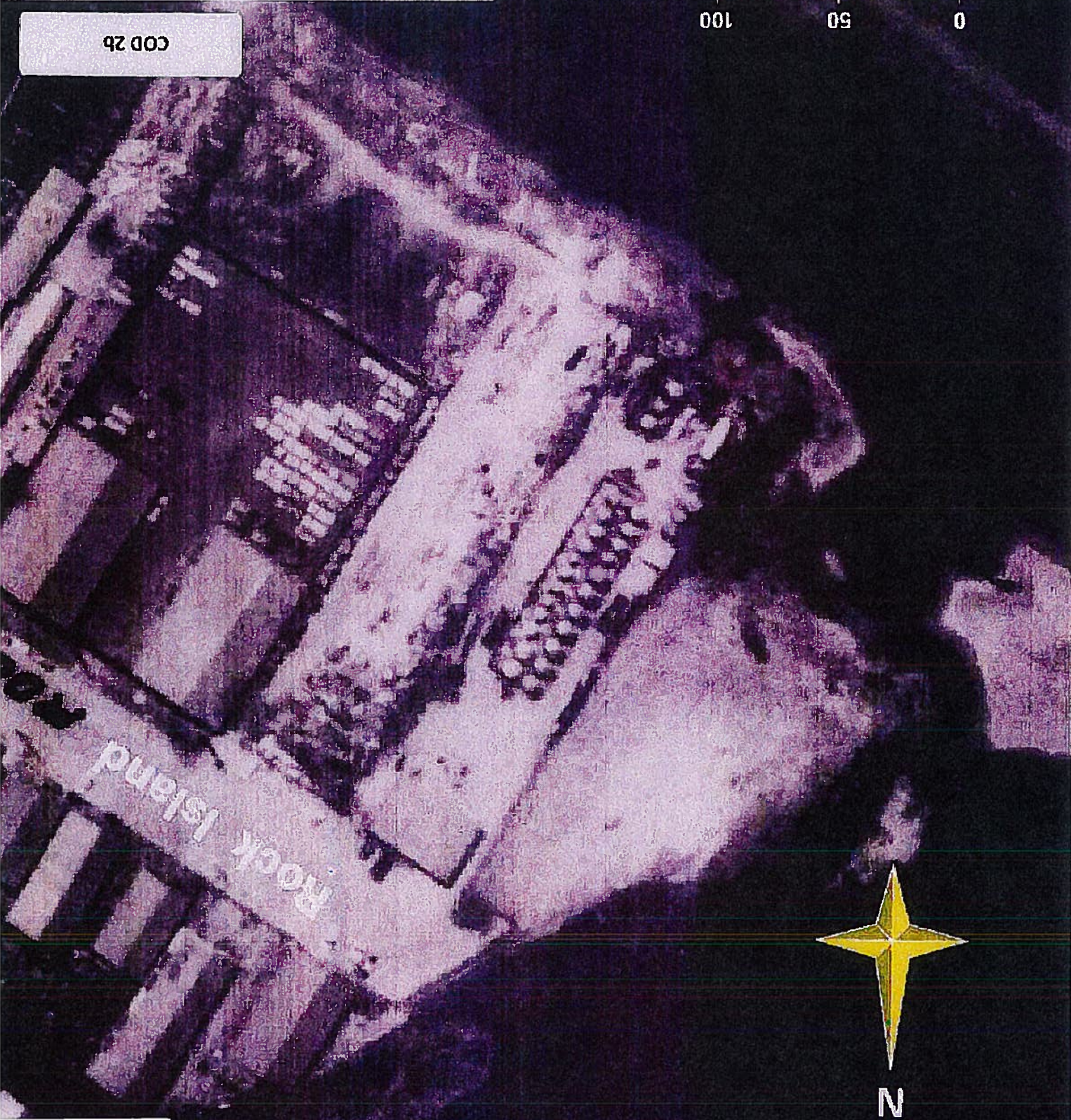
REVISIONS:
1. ALL OTHERS ARE TO BE KEPT FROM THE PROJECT SITE.
2. ANY CHANGES TO THE PROJECT SHALL BE MADE BY THE ENGINEER.
3. THE ENGINEER SHALL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF THE PROJECT.

CITY OF DALLAS
PUBLIC WORKS DEPARTMENT
SURVEY DIVISION
1962 Aerial Photography

EXHIBIT
B



COD 2b



Anderson, Art

From: Marsh, Sandra [sandra.marsh@dallascityhall.com]
Sent: Monday, August 02, 2010 9:10 AM
To: Anderson, Art
Subject: RE: Buckley Oil

Mr. Anderson,

You are correct that it is neither this department's nor the City's intent to put anyone out of business but we do require code compliance. If Buckley Oil is unable to meet code requirements in its current location because there is not enough land to add more diked areas and not enough money to add foam extinguishing systems, then relocating to a larger site would be the best option. It is the responsibility of the owner and management of Buckley Oil to provide alternative solutions to the existing code violations. The alternative solutions must provide a level of safety that is equivalent to that provided by meeting the precise code requirements. Please continue seeking alternatives. I have heard no additional information regarding the Trinity River project or its requirements for existing businesses in the affected area since our meeting on July 16th. Hopefully, this situation can be resolved in a manner that is beneficial to all who are involved.

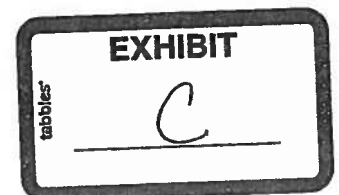
Sandra Marsh, Section Chief
Inspection & Life Safety Education Division
Dallas Fire-Rescue Department
1551 Baylor Street, Suite 400
Dallas, TX 75226
214-670-4375
Fax: 214-670-4324
sandra.marsh@dallascityhall.com

From: Anderson, Art [mailto:aanderson@winstead.com]
Sent: Friday, July 30, 2010 3:28 PM
To: Marsh, Sandra
Subject: RE: Buckley Oil

Chief Marsh, thanks for responding to my email. Our client has reviewed and analyzed your suggestions below. Unfortunately, the separate dike areas would apparently result in the loss of tanks and an uneconomical construction cost that would put Buckley's Rock Island location out of business. As you mentioned at our last meeting and the council stressed at the zoning hearing on the Cedars West PD, the City does not intend or want to put any of the existing businesses out of business. Buckley has made a significant investment in the City of Dallas, pays taxes and employees numerous Dallas residents.

Experience has shown that sound operations is the best way to address fire issues, and it is undisputed that Buckley has some of the best management from an operational standpoint. That's one of the reasons there have been no explosions or serious incidents at the facility since acquired by the current owner. If you have other suggestions that are financially feasible, please let us know so that they can be reviewed and analyzed. Regards, Art Anderson

From: Marsh, Sandra [mailto:sandra.marsh@dallascityhall.com]
Sent: Friday, July 16, 2010 4:09 PM
To: Anderson, Art
Cc: Williams, Kirk
Subject: RE: Buckley Oil



Art,

These systems have to be designed for the application. The only advice that I can give you is to contact 1 - 3 State Licensed fire extinguishing system installers and have them give you a quote for your site. The system would only help out with the tanks that have compatible contents that are too close together. This would not be a satisfactory solution for tanks that should not be stored in the same diked area due to incompatible contents. The diked areas would have to be separated. With side-by-side diked areas a noncombustible partition extending not less than 18 inches above and to the side of the tanks would be required.

Sandra Marsh, Section Chief
Inspection & Life Safety Education Division
Dallas Fire-Rescue Department
1551 Baylor Street, Suite 400
Dallas, TX 75226
214-670-4375
Fax: 214-670-4324
sandra.marsh@dallascityhall.com

From: Anderson, Art [mailto:aanderson@winstead.com]
Sent: Friday, July 16, 2010 3:37 PM
To: Marsh, Sandra
Cc: Williams, Kirk
Subject: Buckley Oil

Chief Marsh,

Thank you for taking the time this afternoon to meet with us and staff. We have taken a look at the options discussed and have the following thoughts:

First, it does not appear that the parking/driveway area on 1803 Rock Island can be used as a relocation area for some of the existing tanks because this area is needed for truck maneuverability.

Second, the existing tanks can't be removed from 1809 and not relocated because this would make the business operation economically infeasible.

Third, we would appreciate if you could provide some more detailed information regarding the fire suppression system you mentioned. Neither Kirk nor I have much knowledge as to what type of system being envisioned, potential manufacturer/installers, construction and maintenance costs, etc. If you could let us know the system that the Fire Department recommends, this will enable Buckley to examine its feasibility for this site.

We look forward to working with you and staff regarding this matter. Regards, Art Anderson

IRS Circular 230 Required Notice—IRS regulations require that we inform you as follows: Any U.S. federal tax advice contained in this communication (including any attachments) is not intended to be used and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or tax-related matter[s].

Information contained in this transmission is attorney privileged and confidential. It is intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone.

5/3/04

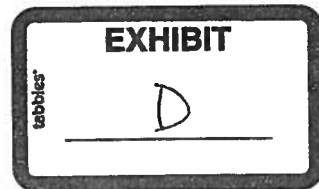
ORDINANCE NO. 25615

An ordinance amending CHAPTER 16, "DALLAS FIRE CODE," of the Dallas City Code, as amended; adopting with certain changes the 2000 Edition of the International Fire Code of the International Code Council, Inc. and the 2000 International Fire Code Standards of the International Fire Code Institute; regulating and governing the safeguarding of life and property from fire and explosion hazards arising from the storage, handling, and use of hazardous substances, materials, and devices, and from conditions hazardous to life or property in the occupancy of buildings and premises, and providing for the issuance of permits for hazardous uses or operations; providing a penalty not to exceed \$2,000; providing a saving clause; providing a severability clause; and providing an effective date.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That CHAPTER 16, "DALLAS FIRE CODE," of the Dallas City Code, as amended, is amended by adopting the 2000 Edition of the International Fire Code of the International Code Council, Inc. (which is attached as Exhibit A and made a part of this ordinance), with the following amendments:

1. Page v, "Sample Ordinance for Adoption of the International Fire Code," is deleted.
2. Subsection 101.1, "Title," of Section 101, "General," of Chapter 1, "Administration," of the 2000 International Fire Code is amended to read as follows:



25615

30. Paragraph 105.6.12, "Cutting and Welding," of Subsection 105.6, "Required Permits," of Section 105, "Permits and Fees," of Chapter 1, "Administration," of the 2000 International Fire Code is amended to read as follows:

"105.6.12 Cutting and welding. A[n ~~operational~~] permit is required to conduct cutting or welding operations within the jurisdiction."

31. Paragraph 105.6.13, "Dry Cleaning Plants"; and Paragraph 105.6.14 "Exhibits and Trade Shows," of Subsection 105.6, "Required Permits," of Section 105, "Permits and Fees," of Chapter 1, "Administration," of the 2000 International Fire Code are deleted.

32. Paragraph 105.6.15, "Explosives," of Subsection 105.6, "Required Permits," of Section 105, "Permits and Fees," of Chapter 1, "Administration," of the 2000 International Fire Code is amended to read as follows:

"105.6.15 Explosives. A[n ~~operational~~] permit is required for the manufacture, transportation, storage, handling, sale or use of any quantity of explosive, explosive material, fireworks, or pyrotechnic special effects within the scope of Chapter 33."

33. Paragraph 105.6.16, "Fire Hydrants and Valves," of Subsection 105.6, "Required Permits," of Section 105, "Permits and Fees," of Chapter 1, "Administration," of the 2000 International Fire Code is deleted.

34. Paragraph 105.6.17, "Flammable and Combustible Liquids," of Subsection 105.6, "Required Permits," of Section 105, "Permits and Fees," of Chapter 1, "Administration," of the 2000 International Fire Code is amended to read as follows:

"105.6.17 Flammable and combustible liquids. A[n ~~operational~~] permit is required:

1. To use or operate a pipeline for the transportation within facilities of flammable or combustible liquids. This requirement shall not apply to the off-site transportation in pipelines regulated by the Department of Transportation (DOTn) (see Section 3501.1.2) nor does it apply to piping systems (see Section 3503.6).

25615

2. To store, handle or use Class I liquids in excess of 5 gallons (19 L) in a building or in excess of 10 gallons (37.9 L) outside of a building, except that a permit is not required for the following:
 - 2.1. The storage or use of Class I liquids in the fuel tank of a motor vehicle, aircraft, motorboat, mobile power plant or mobile heating plant, unless such storage, in the opinion of the code official, would cause an unsafe condition.
 - 2.2. The storage or use of paints, oils, varnishes or similar flammable mixtures when such liquids are stored for maintenance, painting or similar purposes for a period of not more than 30 days.
3. To store, handle or use Class II or Class IIIA liquids in excess of 25 gallons (95 L) in a building or in excess of 60 gallons (227 L) outside a building, except for fuel oil used in connection with oil-burning equipment.
4. To remove Class I or Class II liquids from an underground storage tank used for fueling motor vehicles by any means other than the approved, stationary onsite pumps normally used for dispensing purposes.
5. To operate tank vehicles, equipment, tanks, plants, terminals, wells, fuel-dispensing stations, refineries, distilleries and similar facilities where flammable and combustible liquids are produced, processed, transported, stored, dispensed or used. This shall include tanks, lines, monitor wells and other appurtenances of the tank system.
6. To install, alter, remove, abandon, place temporarily out of service (for more than 90 days) or otherwise dispose of an underground, protected above-ground or above-ground flammable or combustible liquid tank. This shall include tanks, lines, monitor wells and other appurtenances of the tank system.
7. To change the type of contents stored in a flammable or combustible liquid tank to a material which poses a greater hazard than that for which the tank was designed and constructed.
8. To manufacture, process, blend or refine flammable or combustible liquids.
9. To install, construct or alter tank vehicles, equipment tanks, plants, terminals, wells, fuel-dispensing stations, refineries, distilleries and similar facilities where flammable and combustible liquids are produced, processed, transported, stored, dispensed or used.
10. Spraying and dipping operation utilizing flammable or combustible liquids or the application of combustible powders regulated by Chapter 15."

Red tagged +
Withdrawn

CITY OF DALLAS
Building Inspection
320 E. Jefferson Blvd.

PERMIT

Permit Fee: 46.00 Permit#: 0107181076
Value of Work: 3000.00 Issue date: 07/18/01
Land Use Code: 3980 Mapsco Page: 45 /Y Dist: 28
Land Use Description: INDUSTRIAL (INSIDE)
Work Description: INSTALLATION TANK
Address:

1809 ROCK ISLAND ST 75207

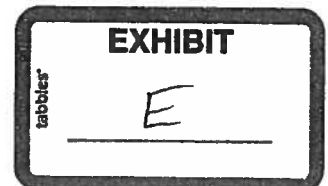
Owner or tenant: BUCKLEY
Address: 1809 ROCK ISLAND ST DALLAS TX 75207
Applicant: DAN GRADY
Contractor: BUCKLEY OIL
Business Address: 1809 ROCK ISLAND ST DALLAS TX 75207
Telephone: 214 421-4147 Fax:

Lot: 015 Block: 73 7342 Act Code: B Dwlg Units:
Work Use: Zoning: IM Own Code: A New Area:
Pro Park: Lot Area: Bedrooms: Stories: 1
Req Park: Totl Area: Baths: Occ Code: B
Sprinkler: Type Const: NA SUP: PDD:

Remarks: SUBJ TO FIRE APPROVAL 214 670-4319/SUBJ TO FLD INSPECTOR APPROVAL
NEED CO BEFORE PERMIT IS FINALLED

This permit is issued on the basis of information furnished in the application and is subject to the provisions of all governing ordinances, which must be complied with, whether or not herein specified.

THIS PERMIT SHOULD BE POSTED AT WORK SITE
AND IS SUBJECT TO CANCELLATION UPON NOTICE.



DATE 10-4-01

DALLAS FIRE DEPARTMENT
GENERAL INSPECTION REPORT

FS # 00/002042 FILE

LOCATION 1809 Rock Island Rd NAME Dan Grady PHONE 214 421 4147
OCCUPANCY Buckley Oil Company ADDRESS _____
PROPERTY CODE: B LTRS: 1 2 3 REINSPECTION DATE(S) _____

Maintaining hazardous conditions is a VIOLATION of City ordinances. The following conditions must be corrected immediately:

- Post ADDRESS visible from the street.
- Provide marking/stripping for all designated FIRE LANES.
- Provide ACCESS to fire department connections.
- MAINTAIN fire lanes free of parked vehicles or other obstructions. ● Security gates must comply with DFD Standard #4.
- SECURELY CLOSE all openings to the building within 48 hours to prevent unauthorized entry.
- Provide and maintain - test - repair - FIRE ALARM system.
- Provide and maintain smoke detectors in approved locations for each RENTAL UNIT.
- PROVIDE one _____ rated portable fire extinguisher for each _____ square feet. Maximum travel distance _____
- SERVICE fire extinguishers and recharge those expended. Annual service required by state license.
- MOUNT portable fire extinguishers in conspicuous accessible locations.
- MOUNT portable fire extinguishers so that the tops are not more than 5 feet above the floor.
- Install extinguishing system for COOKING APPLIANCES producing grease laden vapors.
- Service extinguishing systems for commercial cooking applications every 6 MONTHS or after activation.
- Remove GREASE from cooking appliances, vent-hoods, ducts, etc.
- Provide and maintain - repair - extend - service - the automatic SPRINKLER system.
- Provide _____ extra sprinklers and a sprinkler WRENCH.
- Discontinue LOCKING - BLOCKING- exit doors, exit windows, or exit pathways.
- Maintain exit doors and/or windows easily OPENABLE without a key or special knowledge.
- Repair illuminated EXIT SIGNS.
- Remove additional LOCKS or LATCHES from exit doors equipped with panic hardware.
- SEAL penetrations in floors, walls, ceilings with approved material.
- Remove the accumulation of combustible WASTE.
- Secure compressed gas CYLINDERS.
- Provide FLAME PROOFING for combustible decorations, drapes, etc.
- Maintain 30 inch clearance to ELECTRICAL equipment.
- Provide COVERS for electrical outlets, switches, junction boxes, and breaker boxes.
- Discontinue using EXTENSION CORDS as substitutes for permanent electrical wiring.
- Provide metal containers with metal lids for the storage of OILY RAGS.
- Maintain STORAGE 18 inches below sprinkler heads, and 24 inches below the ceiling.
- Provide approved CABINETS for storage of flammable/combustible liquids in excess of _____ gallons.
- Obtain City of Dallas PERMIT for: Certificate of Occupancy
- Post OCCUPANT LOAD sign near main exit.

* 320 E Jefferson Blvd *

214 - 948 - 4480

214 670 7013

A \$30.00 REINSPECTION FEE is charged for the SECOND reinspection and \$60.00 for EACH SUBSEQ

Inspector BDA 104 069

EXHIBIT

F



City of Dallas

Certificate of Occupancy



1809 ROCK ISLAND ST 75207



R E DODSON
001809 ROCK ISLAND ST DALLAS TX 75207



BUCKLEY OIL COMPANY



(6379) OFFICE SHOWROOM/WAREHOUSE



0110101005

Issue Date: 11/16/2001

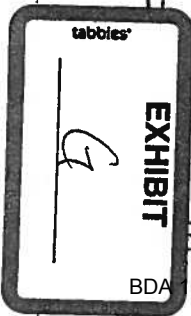
Lot:	Block:	Zoning:	IM	PDD:	0	SUP:
Historic Dist:	Consv Dist:	Pro Park:	0	Req Park:	0	Park Agmt: N
Dwlg Units: 0	Stories: 1	Occ Code:	B1	Lot Area:	0	Total Area: 0
Type Const:	Sprinkler:	Occ Load:		Alcohol:	N	Dance Floor: N

Remarks: SAME USE

Building Official



Development Services Department | Building Inspection Division | 214/948-4480 | www.dallascityhall.com



BDA 101-068,
069, & 070
Attach F
Pg 16



City of Dallas

Certificate of Occupancy



1809 ROCK ISLAND ST 75207

Issued Date:

11/16/2001



R E DODSON
001809 ROCK ISLAND ST DALLAS TX 75207



BUCKLEY OIL COMPANY



(6379) OFFICE SHOWROOM/WAREHOUSE



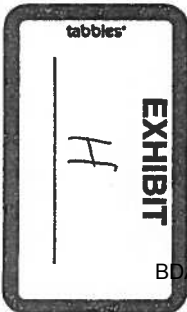
0110101005

Lot:	Block:	Zoning:	IM	PDD:	0	SUP:	
Historic Dist:	Consv Dist:	Pro Park:	0	Req Park:	0	Park Agmt:	N
Dwlg Units: 0	Stories: 1	Occ Code:	B1	Lot Area:	0	Total Area:	0
Type Const:	Sprinkler:	Occ Load:		Alcohol:	N	Dance Floor:	N

Remarks: SAME USE
 This CO includes a petroleum product storage and wholesale use with 21 tanks see building permit from 1957. This CO does not mean that the operator is in compliance with the Fire code and other city codes.

Zalda Basora, Building Official

Development Services Department | Building Inspection Division | 214/948-4480 | www.dallascityhall.com



BDA 101-069

BDA101-068
069, & 70
Attach F
Pg 17



CITY OF DALLAS

BDA 101-068
069, & 070
Attach F
Pg 18

September 23, 2010

Art Anderson
Winstead, PC
5400 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270

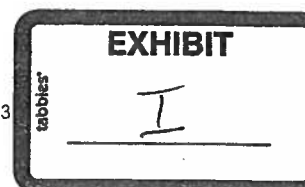
Certified Mail # 7009 0960 0000 9572 5577

Re: Buckley Oil Company Certificate of Occupancy Application Nos. 1008021063
and 1008021064 (the "applications")

Dear Mr. Anderson:

We have completed the initial review of the applications. The "warehouse" and "office/showroom/warehouse" uses referenced in the applications suggest general non-hazardous activities, which are typically B and S general occupancy classifications under the building and fire code. But other information provided in your applications and plans raise questions about the continued appropriateness of a general occupancy classification versus a hazardous occupancy classification. Thus, pursuant to Dallas City Code Chapter 52, "Administrative Procedures for the Construction Codes," Section 306.1, we require the following additional information to continue processing the applications:

1. A land use statement for each building site (1803, 1809, and 1811 Rock Island Street) that identifies all uses and activities, including what appears to be a fuel dispensing station on one of the building sites. Please be specific and include information about the mixing, blending, storage, or manufacturing of any chemicals or other substances and identify each chemical or substance and its common purpose. Please identify the locations and amount of area dedicated to mixing, blending, manufacturing, or storage of any chemicals or other substances.
2. Two scaled site plans for each building site (1803, 1809, and 1811 Rock Island Street) that include:
 - (a) A delineation of the fire lanes.
 - (b) The location of the fire hydrants in relation to structures.
 - (c) A label for each shed or roofed structure, e.g. the main address plus building 1, 2, 3, etc.
 - (d) The square footage of each shed or roofed structure.
 - (e) The number of stories of each shed or roofed structure.



Letter to Art Anderson
September 23, 2010
Page 2 of 3

- (f) The height of each shed or roofed structure.

Also, the following comments on your plans imply that storage is occurring underneath roofed areas:

“New Building: Trucked Product Offload with piping to AST’s.”
“Grease in 20-Gallon Kegs & 5-Gallon Pails.”
“Lubricating Oils Drums.”
“Full Drum staging area.”
“Drummed Products: Miscellaneous Additives and TCE.”
“Waste Storage: 275 Gallon T and 500-Gallon AST.”
“Approx. 40X50 Locked Shed area with small containers.”
“Empty Drums and Drummed Products in Shed.”

Please provide the following additional information on your plans for each item quoted above:

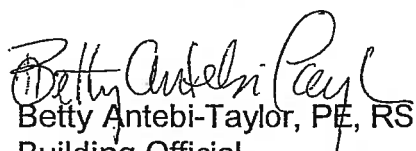
1. Label the uses occurring in or underneath each shed or roofed structure.
2. List the materials stored or used in or underneath each shed or roofed structure, including:
 - (a) Chemical or substance and/or market names for each.
 - (b) Classifications for each chemical or substance: whether hazardous or not hazardous. Please be specific about the physical and/or health hazard or state that the material is neither a physical or health hazard.
 - (c) Aggregate quantity of each chemical or substance.
 - (d) Typical unit container sizes.
 - (e) Chemicals or substances that are piped under roofed structures.
 - (f) Total volume of piping underneath a roofed structure or in a building. The total volume of piping underneath a roofed structure or in a building is considered to be all of the piping measured beginning at the first point in which each pipe enters the building or first extends underneath the horizontal projection of the roof above and includes the entire length of piping. Total volume of piping includes any vessels into which chemicals or other substances are dispensed and stored underneath a roofed structure or in a building.

Letter to Art Anderson
September 23, 2010
Page 3 of 3

Please provide the information requested before the 30th day after the date of this letter as the applications shall expire and be void *ab initio* if Buckley Oil takes no action within this time. See Dallas City Code Chapter 52, "Administrative Procedures for the Construction Codes," Section 306.4.2.

Additionally, any illegal or hazardous conditions on these building sites do not have nonconforming rights and must be satisfactorily addressed in accordance with the Dallas Development Code and the Dallas Building Construction Codes (including the Dallas Fire Code) before certificates of occupancy may be issued.

Sincerely,



Betty Antebi-Taylor, PE, RS
Building Official

Building Inspection

Sustainable Construction and Development Department

c: Larry Holmes, Assistant Building Official
Phil Sikes, Assistant Building Official



RESPONSIBLE DISTRIBUTION VERIFICATION

As of July 30, 2012

Congratulations! NACD is pleased to announce that the following Members and Chemical Handler Affiliates have successfully passed NACD's 4th cycle (2010-2012) on-site Responsible Distribution Verification, demonstrating their commitment to the implementation of Responsible Distribution's environmental, health, safety, and security requirements.

A.G. Layne, Inc.
 Accron, LP
 Acid Products Co., Inc.
 Advanced Chemical Concepts, Inc.
 Advanced Chemical Logistics, Ltd.
 Alchem Chemical Company
 Allied Universal Corporation
 Amber Chemical, Inc.
 American International Chemical, Inc.
 Americhem Sales Corporation
 Amware Logistics Services dba NKM Warehousing*
 Andes Chemical Corporation
 ARC Products, Inc.
 Archway Sales Inc.
 Argo Chemical, Inc.
 Astro Chemicals, Inc.
 B.H. Roettker Co., Inc.
 Barton Solvents, Inc.
 Basstech International LLC
 Bedford Specialty Sales, Inc.
 BHS Marketing LLC
 Bison Laboratories, Inc.
 BKM Resources, Inc. - Global Chemicals
 Boehle Chemicals, Inc.
 Borden & Remington Corp.
 Bossco Industries, Inc.
 Brainerd Chemical Company, Inc.
 Brenntag North America, Inc.
 Brown Chemical Co., Inc.
 Buckley Oil Company
 Cadence Chemical Corporation
 Cal-Chem
 Callahan Company
 Carus Corporation
 Cascade Columbia Distribution
 CCC
 Chautauqua Metal Finishing Supply
 Chem One Ltd.
 Chem/Serv, Inc.
 CheMarCo, Inc.
 Chemical Distributors Inc.
 Chemical Distributors, Inc.
 Chemical Solvents, Inc.
 Chemicals, Inc. USA, a Chemgroup Co.
 Chemisphere Corporation

Chem-Materials Co., Inc.
 Chemsolv, Inc.
 Chem-Way Corporation
 Chou Enterprises Ltd
 Coast Southwest, Inc.
 Colonial Chemical Solutions, Inc.
 Columbus Chemical Industries, Inc.
 Conchemco, Ltd.
 Cone Solvents, Inc.
 Connell Bros. Company, Ltd.
 CSD/Startex Distribution
 D & F Distributing, Inc.
 D.B. Becker Company, Inc.
 D.N. Lukens, Inc.
 Dakota Distributing, LP
 Dar-Tech, Inc.
 Deeks & Company, Inc. (Ga)
 DeWolf Chemical, Inc. and its Subsidiary,
 Glenn Corporation
 Dorsett & Jackson, Inc.
 DPC Industries, Inc.
 Dunleary, Inc.
 Durr Marketing Associates, Inc.
 E.M. Sullivan Associates, Inc.
 E.W. Kaufmann Co.
 Edson Industries
 Emco Chemical Distributors, Inc.
 Essential Ingredients, Inc.
 Expo Chemical Co., Inc.
 FBC Chemical Corp.
 Fenway Materials, Inc.
 Fitz Chem Corporation
 G.J. Chemical Co., Inc.
 G.R. O'Shea Company
 Gallade Chemical, Inc.
 Gehring-Montgomery, Inc.
 George S. Coyne Chemical Co., Inc.
 Gilbert & Jones Company Inc.
 Gillen Company, LLC
 Greenchem Industries LLC
 Gulf Coast Chemical, LLC
 Hall Technologies, Inc.
 Harcros Chemicals, Inc.
 Harris & Ford, LLC
 Harry W. Gaffney & Co., Inc.
 Harwick Standard Distribution Corp.

Hawk Chemical Company, Inc.
 Helm U.S. Corporation
 Holland Applied Technologies
 Horn
 Houghton Chemical Corporation
 Hubbard-Hall Inc.
 Hydrite Chemical Co.
 Ideal Chemical & Supply Co.
 Independent Chemical Corporation
 Industrial Chemicals Corp.
 Industrial Chemicals, Inc.
 Industrial Chemicals, Inc.
 Inland Star Distribution Centers, Inc.*
 International Distribution Corporation*
 Interstate Chemical Co., Inc.
 J. Drasner & Co., Inc.
 J. Tech Sales, LLC
 J.H. Calo Company, Inc.
 Jensen-Souders & Associates, Inc.*
 JR Hess Company
 K.A. Steel Chemicals, Inc.
 K.G. International, Inc.
 KIC Chemicals, Inc.
 KODA Distribution Group
 Kohl Marketing, Inc.
 Kraft Chemical Company
 K-Solv, LP
 Lacy's Express, Inc.*
 Lidochem, Inc.
 Lincoln Fine Ingredients
 Linden Bulk Transportation
 Linden Warehouse and Distribution Co., Inc.*
 Lintech International
 Lipscomb Chemical Co., Inc.
 Lowe Chemical Co.
 M Chemical Company, Inc.
 Majemac Enterprises Inc.
 Maroon Incorporated
 Maryland Chemical Company, Inc.
 Matteson-Ridolfi, Inc.
 Mays Chemical Company, Inc.
 McCullough & Associates
 Mehaffey & Daigle, Inc.
 Miles Chemical Company
 Mobile Solvent & Supply, Inc.
 Mutchler Inc., Pharmaceutical Ingredients



New England Resins & Pigments Corp.
NorFalco Inc.
Norman, Fox & Co.
North Industrial Chemicals, Inc.
Ohio Chemical Services, Inc.
Pacific Coast Chemicals Co.
Palmer Holland, Inc.
Parchem - Fine & Specialty Chemicals
PhibroChem
Pochteca Materias Primas S.A. de C.V.
Pride Solvents & Chemical Co., Inc.
Producers Chemical Company
PVS-Nolwood Chemicals, Inc.
Quaker City Chemicals, Inc.
R.E. Carroll, Inc.
Radchem Products, Inc.
Raw Materials Corporation
Reagent Chemical & Research, Inc.
Research Solutions
Rierden Chemical & Trading Company
Riverside Chemical Co., Inc.
Roberts Chemical Co., Inc.
Ross Organic Specialty Sales, Inc.
Rowell Chemical Corp.
Royale Pigments and Chemicals, Inc.
Sagar Enterprises, Inc.
Sal Chemical
Schibley Chemical Company, Inc.
Sea-Land Chemical Co.
Seeler Industries, Inc.
Shepard Bros. Inc.
Slack Chemical Co., Inc.
SolvChem, Inc.
Specialty Chemical Sales, Inc.
Stockton Sales, Inc.
Store+Deliver+Logistics Pte Ltd.*
Superior Materials, Inc.
Superior Solvents and Chemicals
Surpass Chemical Co., Inc.
T.H. Hilson Company
Tanner Industries, Inc.
Tarr, LLC
Tavco Chemicals, Inc.
TCR Industries
Technical Products, Inc.
Thatcher Company
The Cary Company
The M.F. Cachat Company
The Meadows Group, LLC
The Plaza Group
Third Coast Terminals, Inc.
Thornley Company, Inc.
Tilley Chemical Co., Inc.
TLC Ingredients, Inc.
TMC Materials, Inc.

Trans Western Chemicals, Inc
TransChem, Inc.
Transchemical Inc.
Tri-iso, Inc.
TRInternational, Inc.
U.S. Chemicals, LLC
Univar
USA Container Co. Inc.*
Valley Solvents & Chemicals
Van Horn, Metz & Co., Inc.
Veckridge Chemical Company, Inc.


Viking Chemical Company
Vivion, Inc.
Walsh & Associates, Inc.
Wausau Chemical Corporation
Webb Chemical Service Corp.
Weber Logistics*
Whitaker Oil Company
William B. Tabler Co., Inc.
Wilson Industrial Sales Co., Inc.
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- Truck to Drum/Tote



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800.295.0081

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National Association of Chemical Distributors



GREENVILLE | SPARTANBURG | CHARLESTON



City of Dallas

A

APPLICATION/APEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 101-069

Data Relative to Subject Property:

Date: 6-3-11

Location address: 1809 Rock Island St. Zoning District: PD 784

Lot No.: 5d Block No.: 73/7342 Acreage: 0.71 Census Tract: 0033.00

77 Lot 16
Street Frontage (in Feet): 1) 90' 2) _____ 3) _____ 4) _____ 5) _____

To the Honorable Board of Adjustment :

Owner of Property/or Principal: Buckley Oil Company

Applicant: Tommy Mann, Winstead PC Telephone: (214) 745-5724

Mailing Address: 1201 Elm St., suite 5400 Zip Code: 75270

Represented by: _____ Telephone: _____

Mailing Address: _____ Zip Code: _____

Affirm that a request has been made for a Variance __, or Special Exception __, of Appeal of building official decision to deny an application for a certificate of occupancy. The decision was received on May 20, 2011.

Application is now made to the Honorable Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described request for the following reason:

The business has been legally operating for several years under applicable state and local laws and federal regulations. Owner does not waive any legal rights by filing this appeal.

Note to Applicant: If the relief requested in this application is granted by the Board of Adjustment, said permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

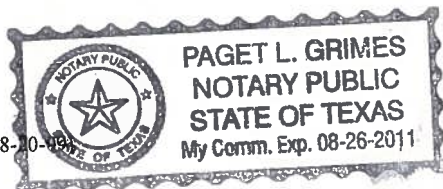
Respectfully submitted: Tommy Mann Applicant's name printed [Signature] Applicant's signature

Affidavit

Before me the undersigned on this day personally appeared Tommy Mann who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

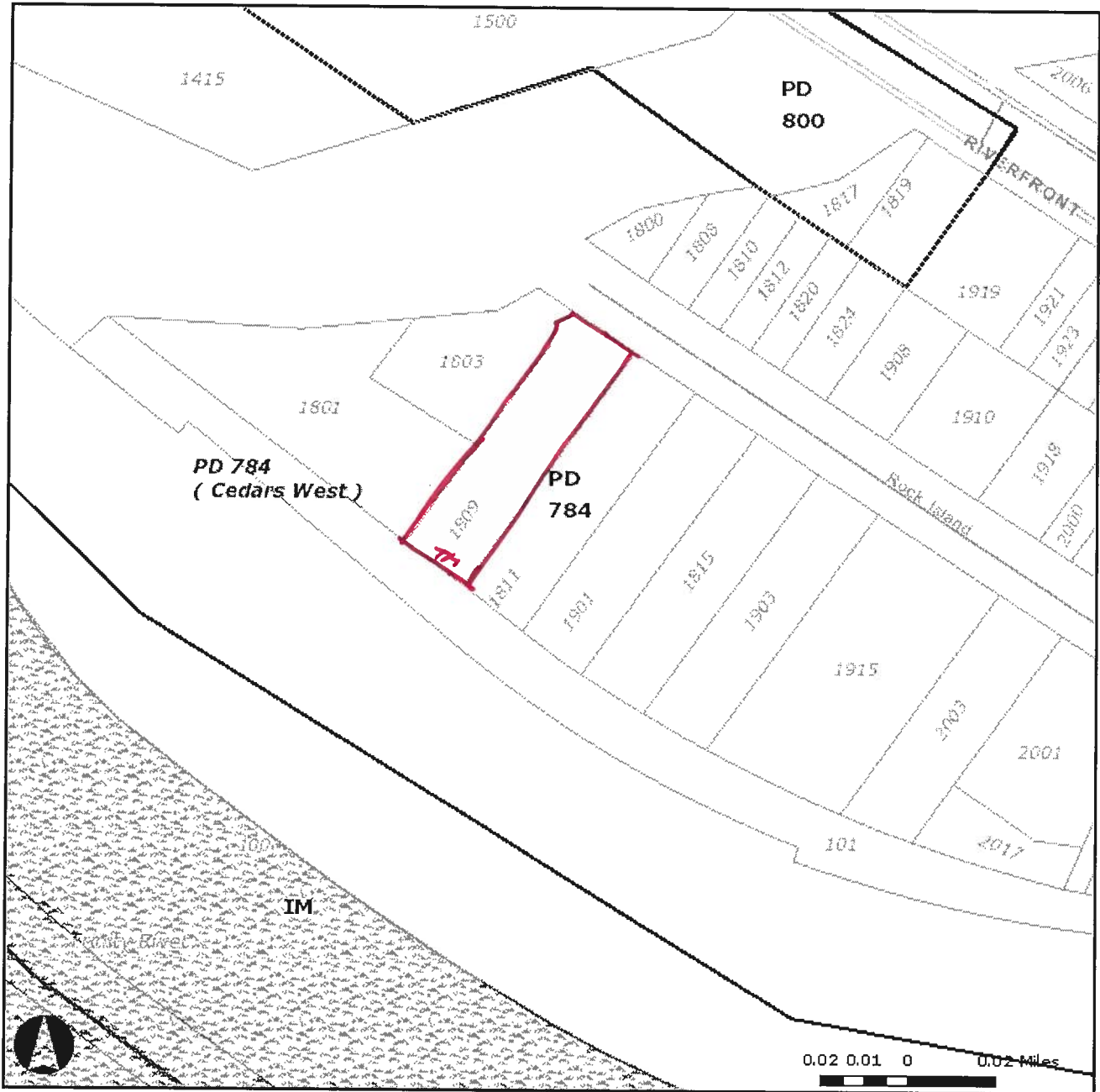
[Signature]
Affiant (Applicant's signature)

Subscribed and sworn to before me this 2nd day of June, 2011



[Signature]
Notary Public in and for Dallas County, Texas

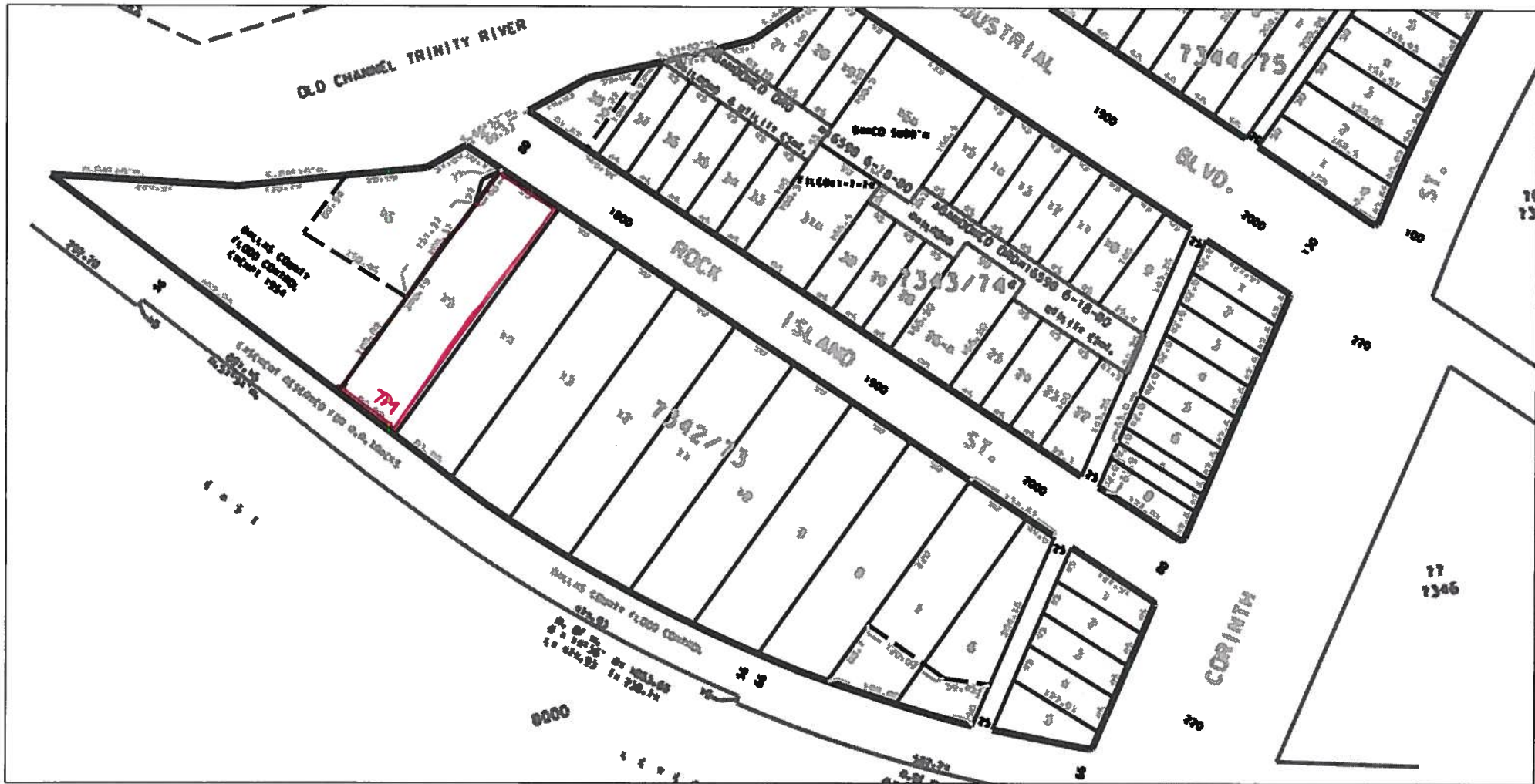
City of Dallas Zoning



- City Boundaries
- County
- Certified Parcels
- DISD Sites
- Council Districts
- Waterways
- Parks

- SUP
- Dry Overlay
- D
- D-1
- Historic Overlay
- Historic Subdistricts
- NSO Overlay
- NSO Subdistricts

- PD Subdistricts
- PD193 Oak Lawn
- PDS Subdistricts
- Base Zoning
- Pedestrian Overlay
- CP
- SP
- Environmental Corridors



C:\tax_plats\7342_73.dgn 6/3/2011 9:05:59 AM



CITY OF DALLAS

May 18, 2011

Arthur J. Anderson
Winstead, P.C.
5400 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270

CERTIFIED MAIL # 7000 0520 0022 2596 9368
RETURN RECEIPT REQUESTED

RE: Denial of certificate of occupancy application nos. 1008021063 and 1008021064 (the "applications") for a petroleum product storage and wholesale use at 1803 and 1809 Rock Island Street ("the Properties") owned by Buckley Oil Company ("Buckley Oil")

Dear Mr. Anderson:

This letter is to inform you that the applications for the Properties are hereby denied and any use operating on the Properties without a certificate of occupancy is an illegal land use that must immediately cease operating.¹

The building official is required to deny an application for a certificate of occupancy if the building official determines that the certificate of occupancy requested does not comply with the codes, the Dallas Development Code, or other city ordinances, rules, or regulations.² Past inspections of the Properties by the Fire Department have revealed many different Fire and Construction Code violations, which have not been corrected, including:

- (1) Failure to provide and maintain required spatial separation between tanks containing flammable or combustible liquids in violation of Section 3404.2.9.5.1.1 of the Dallas Fire Code;
- (2) Failure to obtain a permit for storage, handling, or use of Class I, II, or IIIA liquids in violation of Section 105.6.16 of the Dallas Fire Code;
- (3) Failure to obtain acceptance tests for tanks being placed into service in violation of Section 3404.2.12.1 of the Dallas Fire Code; and

¹ Subsection 306.5, "Denial," of Chapter 52, "Administrative Procedures for the Construction Codes," of the Dallas City Code; Section 1.104, "Certificate of Occupancy," of Chapter 51A of the Dallas Development Code; Subsection 306.1, "Use or Occupancy," of Chapter 52, "Administrative Procedures for the Construction Codes," of the Dallas City Code; and Subsection 306.2, "Change in Use or Occupancy," of Chapter 52, "Administrative Procedures for the Construction Codes," of the Dallas City Code.

² Paragraph 1 of Subsection 306.5, "Denial," of Chapter 52, "Administrative Procedures for the Construction Codes," of the Dallas City Code.

(4) Failure to obtain a permit for storage tanks in violation of Section 301.1.1 of Chapter 52, "Administrative Procedures for the Construction Codes," of the Dallas City Code.³

Additionally, the building official is required to deny an application for a certificate of occupancy if the building official determines that the application contains false, incomplete, or incorrect information and the applicant has failed to correct or supplement the false, incomplete, or incorrect information within a reasonable time after the building official requests that the information be corrected or supplemented.⁴

Once our office completed its initial review of the applications, the building official sent you a letter dated September 23, 2010 notifying you that we required additional information to process the applications.⁵ On October 8, 2010, the building official sent you another letter responding to your letters dated September 29, and October 7, 2010 and again notified you that we require all of the additional information requested in our September 23, 2010 letter to process the applications.⁶ To date, we have still not received all of the additional information required, including:

- (1) The outline of the fire lanes shown on each site plan;
- (2) The height of "Building One (1)";
- (3) Sufficient information to categorize the use of Buildings 2A, 3C, B, D, E, and F;
- (4) Sufficient information to determine whether mixing and/or dispensing operations are occurring in Buildings 3C and F and sufficient information about which products, including their building and fire code classifications, are involved in the mixing and/or dispensing operations and how much area within each building is dedicated to the mixing and/or dispensing operations; and
- (5) The length of the piping that enters and terminates in Building F as shown on your Attachments 3 and 4.

³ See attached letter dated February 19, 2009 to Arthur Anderson regarding Fire Code and zoning violations at 1803, 1809, and 1811 Rock Island Street. The list of Fire Code violations in this letter is not an exhaustive list of all of the violations on the Properties.

⁴ Paragraph 3 of Subsection 306.5, "Denial," of Chapter 52, "Administrative Procedures for the Construction Codes," of the Dallas City Code.

⁵ See attached letter dated September 23, 2010 to Art Anderson regarding Buckley Oil Company Certificates of Occupancy Application Nos. 1008021063 and 1008021064.

⁶ See attached letter dated October 8, 2010 to Arthur Anderson regarding Buckley Oil Company Certificates of Occupancy Application Nos. 1008021063 and 1008021064.

May 18, 2011
CO 1008021063 and 1008021064 Denial
Page Three (3)

You have failed to supplement the required information requested within a reasonable time. Thus, the applications are denied.

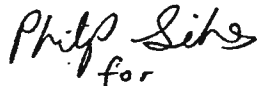
Further, the building official shall deny an application for a certificate of occupancy if the building official determines that the applicant does not possess a required city license, permit, or registration to operate the use or occupancy.⁷ Past inspections of the Properties by the Fire Department have revealed that Buckley Oil does not possess required city permits, including:

(1) Permits for storage, handling, or use of Class I, II, or IIIA liquids in accordance with Section 105.6.16 of the Dallas Fire Code; and

(2) Permits for storage tanks in accordance with Section 301.1.1 of Chapter 52, "Administrative Procedures for the Construction Codes," of the Dallas City Code.⁸

Any determination made by the building official shall be final unless appealed within 15 days after you receive this letter.⁹ Questions about the appeal process should be directed to the building official at 214-948-4320.

Sincerely,



Batsheba Antebi, PE
Building Official
Sustainable Development and Construction Department

Enclosures (3)

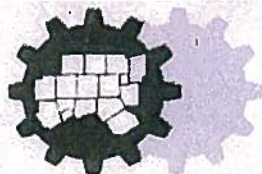
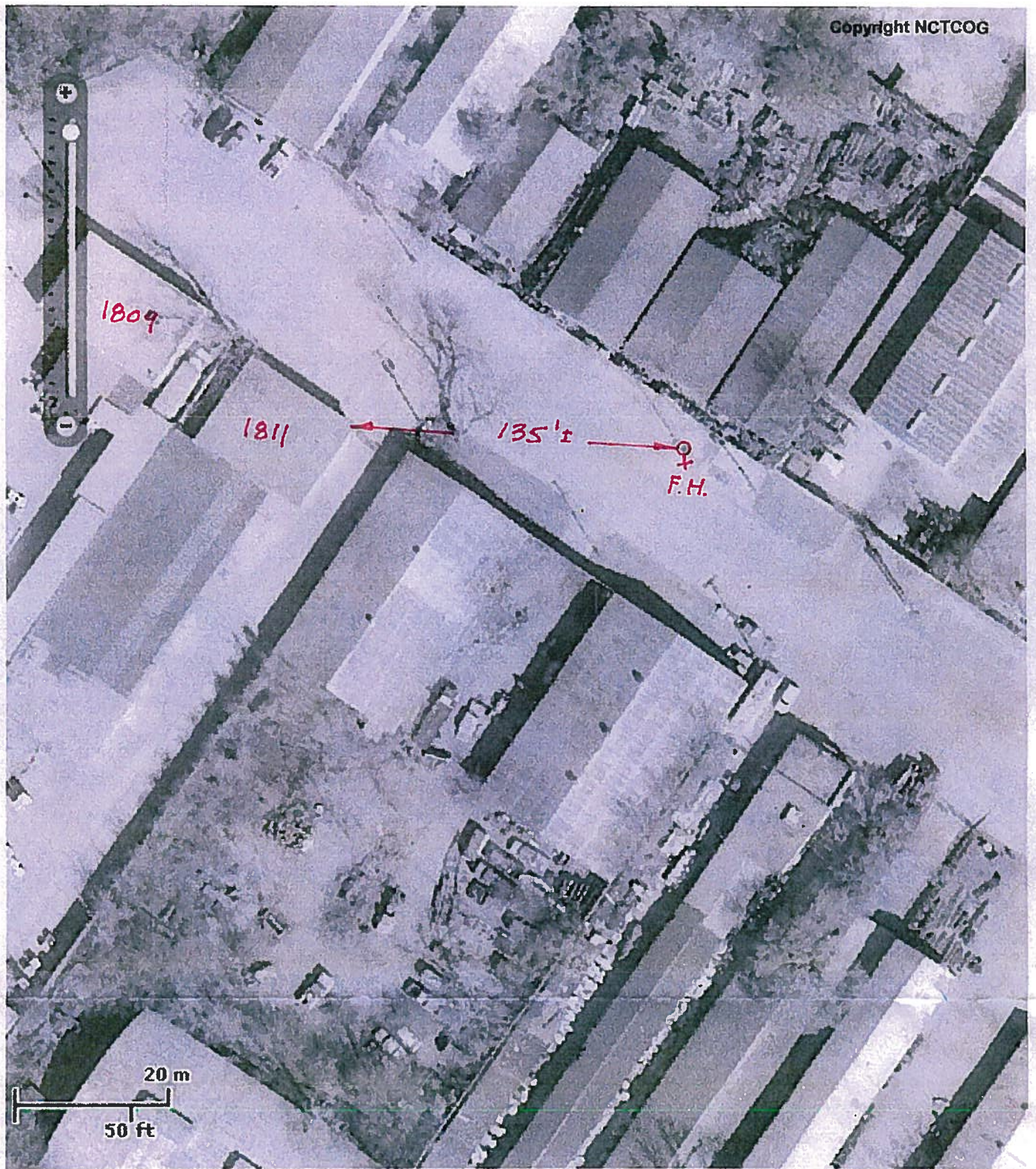
c: Theresa O'Donnell, Director, Sustainable Development and Construction
Chris Bowers, First Assistant City Attorney
Andrew M. Gilbert, Assistant City Attorney
Cynthia Michaels, Section Chief, Inspection & Life Safety Education, Fire Department
Kevin Sipes, Deputy Chief, Inspection. & Life Safety Education, Fire Department

⁷ Paragraph 4 of Subsection 306.5, "Denial," of Chapter 52, "Administrative Procedures for the Construction Codes," of the Dallas City Code.

⁸ See attached letter dated February 19, 2009 to Arthur Anderson regarding Fire Code and zoning violations at 1803, 1809, and 1811 Rock Island Street. The list of violations in this letter is not an exhaustive list of all of the violations on the Properties.

⁹ Paragraph 2 of Section 306.15, "Appeals of Actions and Determinations," of Chapter 52, "Administrative Procedures for the Construction Codes," of the Dallas City Code and Paragraph (2) of Subsection (a), "Initiation," of Section 51A-4.703, "Board of Adjustment Hearing Procedures," of the Dallas Development Code.

Sustainable Development and Construction Department - Building Inspection - 320 E. Jefferson Blvd., Rm. 204 - (214) 948-4320



North Central Texas
Council of Governments

My Map
DFWMaps.com

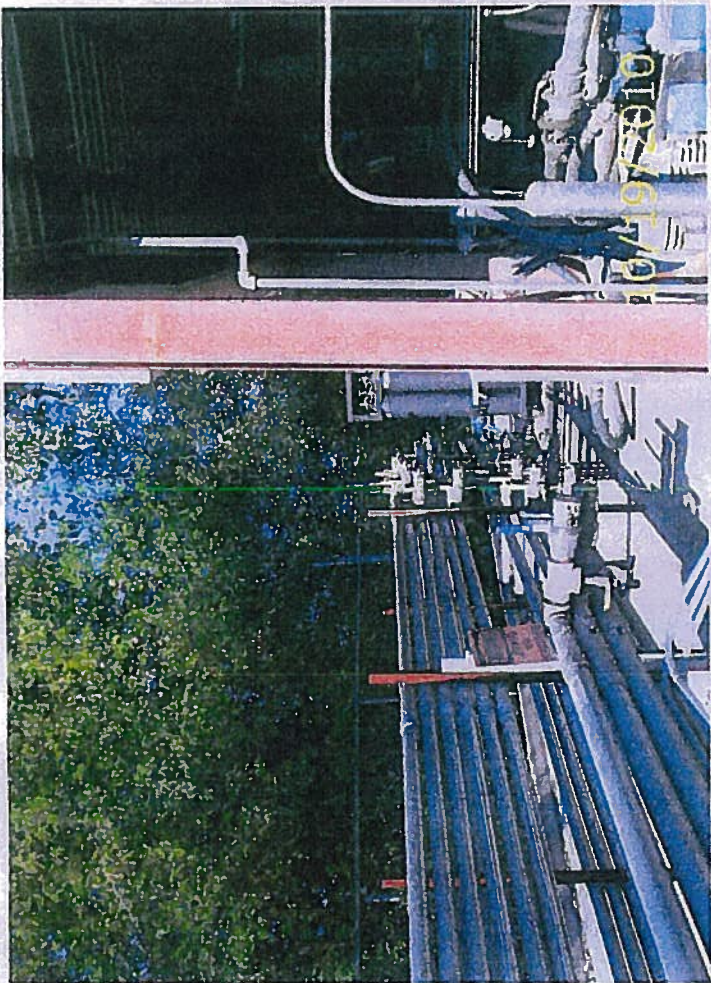
<http://www.dfwmaps.com/#>

DISCLAIMER

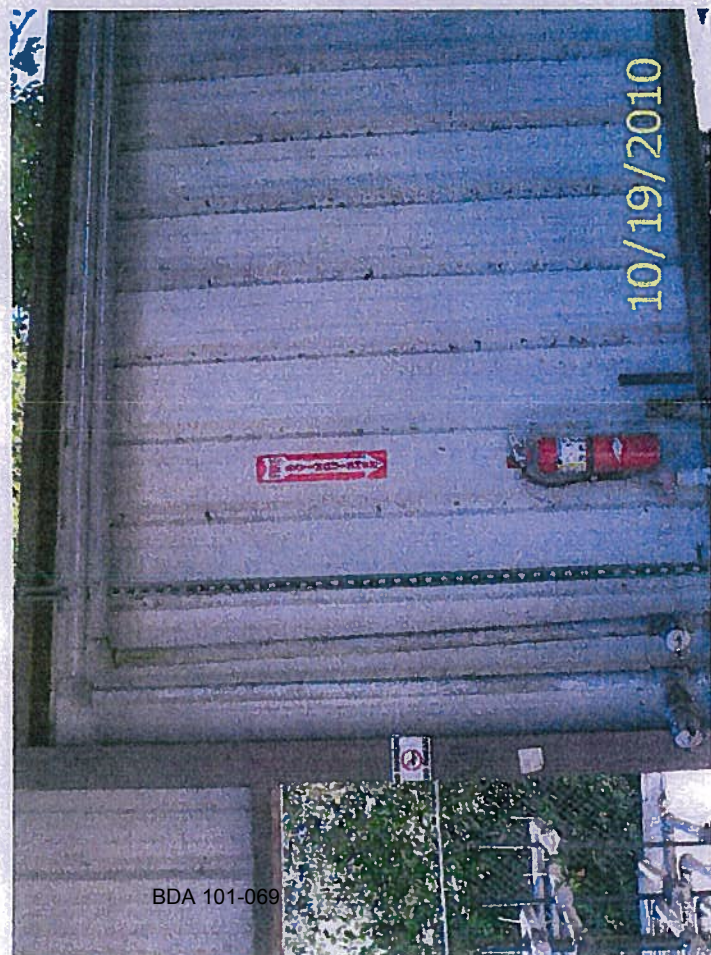
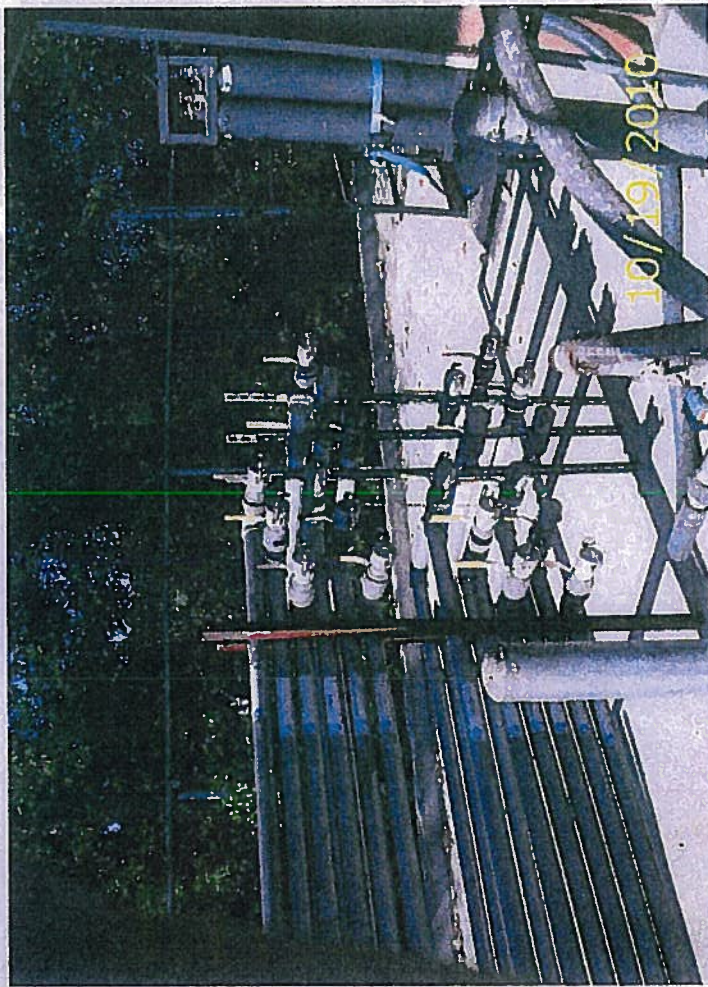
This data has been compiled for NCTCOG. Various official and unofficial sources were used to gather this information. Every effort was made to ensure the accuracy of this data, however, no guarantee is given or implied as to the accuracy of said data.



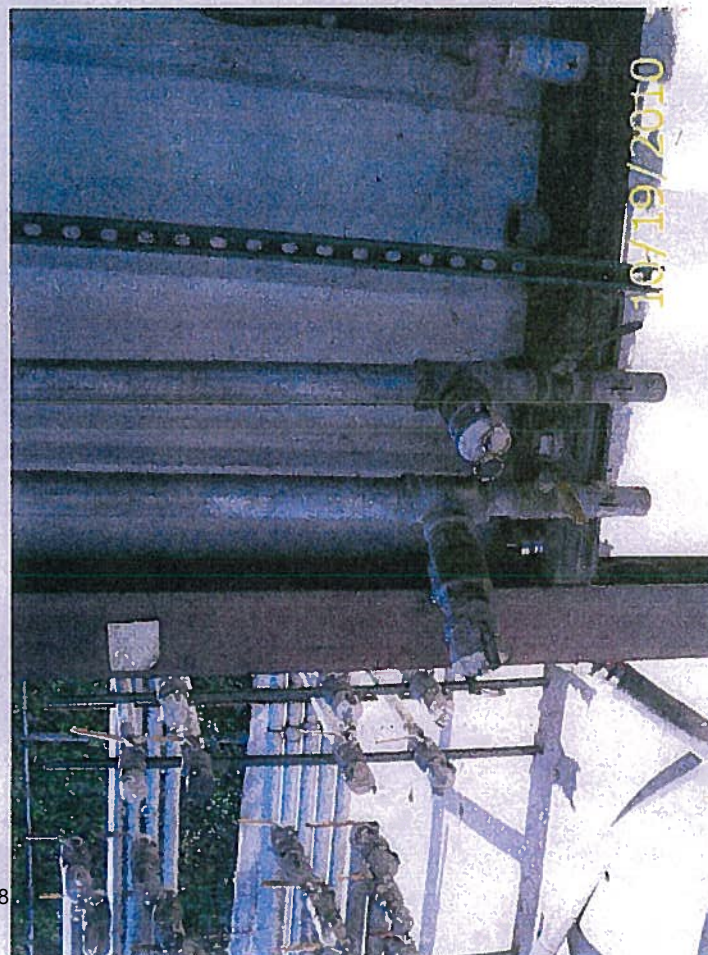
Fire Hydrant approx. 135' from 1811 Rock Island St.



2



Attachment 3





5/

Attachment 4

Attachments 3 & 4

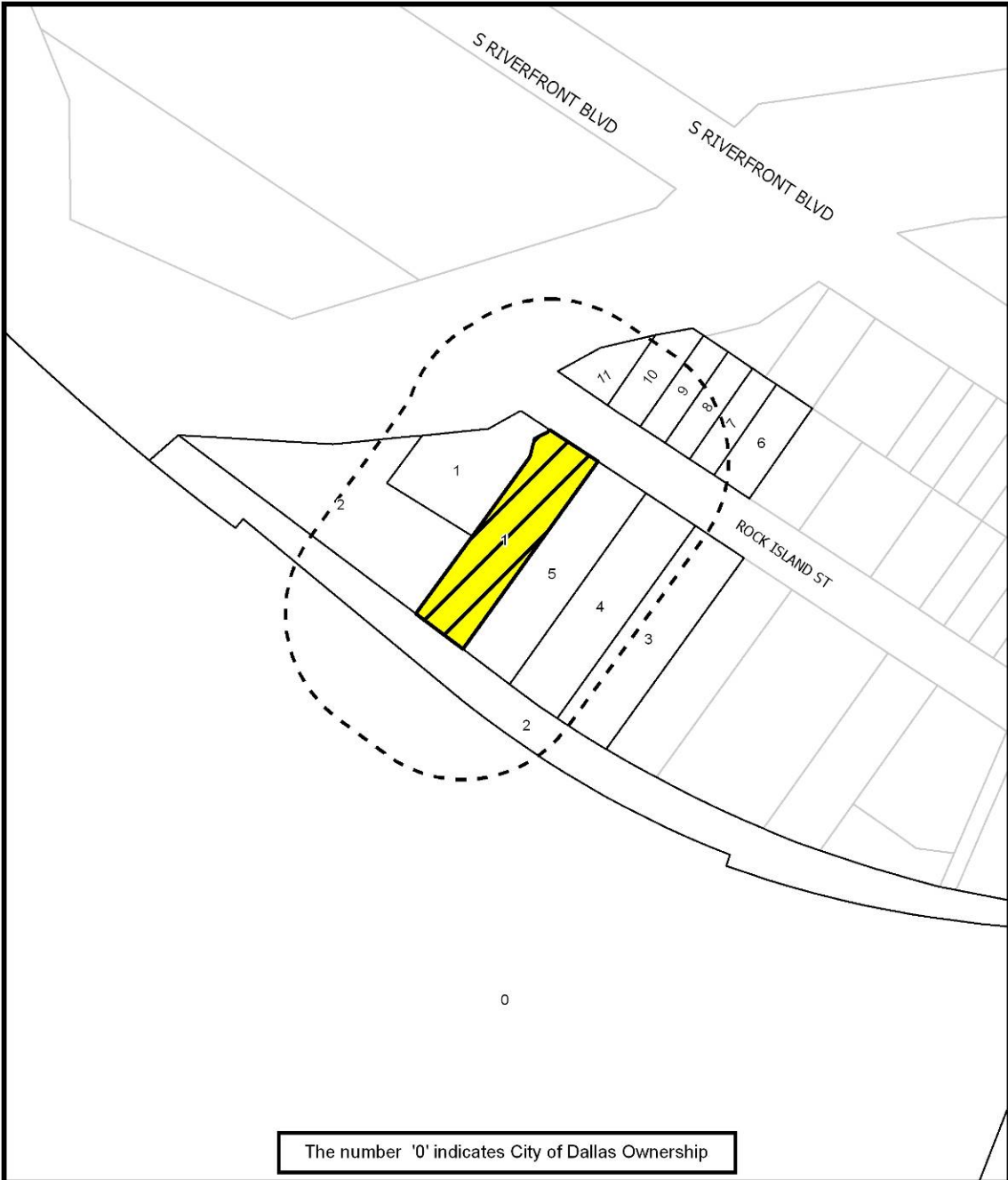
No continuous piping goes into or thru Covered area "F". The pipeline ends as shown in Pictures 2, 4, 6 & 7. There are 2 x 2" pipelines under roof of Covered area "F" (see pics 1,3 & 5) and can only be used (1 line at a time) when connected to the pump by hose connecting at the end of pipeline to the pump & a hose connection from the pump to the pipeline (pic. 1 & 3)



6/



7/
6-89



 1:2,400	NOTIFICATION		Case no: BDA101-069
	<div style="border: 1px solid black; padding: 2px; display: inline-block;">200'</div> AREA OF NOTIFICATION <div style="border: 1px solid black; padding: 2px; display: inline-block;">11</div> NUMBER OF PROPERTY OWNERS NOTIFIED	Date: 7/26/2012	

Notification List of Property Owners

BDA101-069

11 Property Owners Notified

<i>Label #</i>	<i>Address</i>	<i>Owner</i>
1	1809 ROCK ISLAND ST	BUCKLEY OIL CO
2	101 CORINTH ST	DALLAS COUNTY FLOOD CONTROL DISTRICT
3	1815 ROCK ISLAND ST	JOHNSON DELMO LEON
4	1901 ROCK ISLAND ST	JOHNSON REALTY CO
5	1811 ROCK ISLAND ST	ROSEBUD HOLDINGS LLC
6	1824 ROCK ISLAND ST	SHERARD MARTHA M
7	1820 ROCK ISLAND ST	SHERARD SCOTT T
8	1812 ROCK ISLAND ST	SHERARD MILLIGAN F & MARCELLE MOUNT
9	1810 ROCK ISLAND ST	SHERARD MILLIGAN
10	1808 ROCK ISLAND ST	HML HOLDINGS LLC TEXAS LIMITED LIABILITY
11	1800 ROCK ISLAND ST	ROCKALONG LLC

FILE NUMBER: BDA 101-070

BUILDING OFFICIAL'S REPORT:

Application of Tommy Mann of Winstead, PC, to appeal the decision of the administrative official at 1803 Rock Island Street. This property is more fully described as part of Lot 16 in City Block 73/7342 and is zoned PD-784, which requires that the building official deny an application for a certificate of occupancy if the building official determines that the certificate of occupancy would be issued on the basis of false, incomplete, or incorrect information; the use is being operated in violation of the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations. The applicant proposes to appeal the decision of an administrative official to deny an application for a certificate of occupancy.

LOCATION: 1803 Rock Island Street.

APPLICANT: Tommy Mann of Winstead, PC

REQUEST:

An appeal has been made requesting that the Board of Adjustment reverse/overturn the Building Official's May 18th decision (received by the applicant according to the board of adjustment application on May 20, 2011) to deny an application for a new certificate of occupancy.

STANDARD FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:

Dallas Development Code Sections 51A-3.102(d)(1) and 51A-4.703(a)(2) states that any aggrieved person may appeal a decision of an administrative official when that decision concerns issues within the jurisdiction of the Board of Adjustment.

The Board of Adjustment may hear and decide an appeal that alleges error in a decision made by an administrative official. Tex. Local Gov't Code Section 211.009(a)(1).

Administrative official means that person within a city department having the final decision-making authority within the department relative to the zoning enforcement issue. Dallas Development Code Section 51A-4.703(a)(2).

BACKGROUND INFORMATION:

Zoning:

Site: PD 784 (Planned Development)

North: PD 784 (Planned Development)
South: PD 784 (Planned Development)
East: PD 784 (Planned Development)
West: PD 784 (Planned Development)

Land Use:

The subject site is developed with a petroleum product and wholesale use (Buckley Oil). The areas to the north and east appear to be developed with industrial/warehouse use; and the areas to the south and west appear to be undeveloped.

Zoning/BDA History:

1. BDA 101-068, Property at 1809 Rock Island Street (the property immediately south of the subject site) On August 14, 2012, the Board of Adjustment Panel A conducted a hearing to consider an appeal made requesting that the Board of Adjustment reverse/overturn the Building Official's May 18, 2011 decision (received by the applicant according to the board of adjustment application on May 20, 2011) to revoke the existing certificate of occupancy for the property. The Board held this application under advisement until October 16, 2012.
2. BDA 101-069, Property at 1809 Rock Island Street (the property immediately south of the subject site) On August 14, 2012, the Board of Adjustment Panel A conducted a hearing to consider an appeal made requesting that the Board of Adjustment reverse/overturn the Building Official's May 18, 2011 decision (received by the applicant according to the board of adjustment application on May 20, 2011) to deny an application for a certificate of occupancy. The Board held this application under advisement until October 16, 2012.

Timeline:

June 3, 2011: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

- June 22, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- June 23, 2011: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the August 1st deadline to submit additional evidence for staff to factor into their analysis; and the August 5th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the outline of procedure for appeals from decisions of the building official to the board of adjustment; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- July 28, 2011: The applicant requested postponement of the application from Panel A's August 16th hearing to Panel A's September 20th hearing.
- August 11, 2011: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the September 1st deadline to submit additional evidence for staff to factor into their analysis; and the September 9th deadline to submit additional evidence to be incorporated into the Board's docket materials;
 - the outline of procedure for appeals from decisions of the building official to the board of adjustment; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- August 25, 2011: The applicant requested postponement of the application from Panel A's September 20th hearing to Panel A's October 18th hearing.
- September 26, 2011: The applicant requested postponement of the application from Panel A's October 18th hearing to Panel A's November 15th hearing.
- October 28, 2011: The applicant requested postponement of the application from Panel A's November 15th hearing to Panel A's January 17, 2012 hearing.
- December 17, 2011: The applicant requested postponement of the application from Panel A's January 17, 2012 hearing to Panel A's February 14, 2012 hearing.
- December 20, 2011: Application was postponed indefinitely.

- June 22, 2012: The applicant indicated that he was ready to proceed with this request.
- June 22, 2012: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the August 3rd deadline to submit additional evidence to be incorporated into the Board's docket materials; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- July 31, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for August public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, and the Assistant City Attorneys to the Board.
- August 3, 2012: The Assistant City Attorney assisting the Building Official on this application forwarded additional information to staff.
- August 3, 2012: The applicant forwarded additional information on this application to staff.
- August 14, 2012: The Board of Adjustment Panel A conducted a hearing to consider an appeal has been made requesting that the Board of Adjustment reverse/overturn the Building Official's May 18th decision (received by the applicant according to the board of adjustment application on May 20, 2011) to deny an application for a new certificate of occupancy.

The following written documents were submitted at the August 14, 2012 briefing/public hearing in conjunction with BDA 101-068, BDA 101-069, and BDA 101-070:

1. The Assistant City Attorney assisting the Building Official submitted a document that included among other things a "summary of issues under consideration" (see Attachment A).
2. The Assistant City Attorney assisting the Building Official submitted a copy of a Certificate of Occupancy for property located at 1809 Rock Island Street dated 11/16/2001" (see Attachment C).
3. The Assistant City Attorney assisting the Board of Adjustment submitted copies of portions of Section 306 of the Chapter 52 of the Dallas City Code (see Attachment B).

4. The applicant submitted a document entitled "Linda Henry Testimony" (see Attachment D).
5. The applicant submitted a document entitled "Olen Ray Long Testimony" (see Attachment E).

The Assistant City Attorney assisting the Building Official and the applicant submitted paper copies of their power point show presented at the August 14th hearing. Copies of these power point shows have been placed in the case files and are available for review upon request.

The Board held this application under advisement until October 16, 2012.

August 21, 2012: The Board Administrator wrote the applicant a letter that conveyed the board's action on this appeal and the October 5th deadline to submit any additional information that he would want to be incorporated into the board's October docket.

October 2, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, the Building Inspection Senior Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

October 5, 2012: The applicant forwarded additional information on this application and BDA 101-068 and BDA 101-069 to staff (see Attachment F).

GENERAL FACTS/STAFF ANALYSIS:

- The Building Official's May 18, 2011 letter to Arthur Anderson of Winstead, P.C. regarding "Denial of certificate of occupancy application nos. 100802063 and 1008021064 ("the applications") for a petroleum product storage and wholesale use at 1803 and 1809 Rock Island Street ("the Properties") owned by Buckley Oil Company ("Buckley Oil")" is included in this case report. The letter states among other things that:
 1. The applications for the Properties are denied and any use operating on the Properties without a certificate of occupancy is an illegal land use that must immediately cease operating.
 2. The building official is required to deny an application for a certificate of occupancy if the building official determines that the certificate of occupancy

requested does not comply with code, and that past inspections of the Properties by the Fire Department have revealed many different Fire and Construction Code violations which have not been corrected.

3. The building official is required to deny an application for a certificate of occupancy if the building official determines that the application contains false, incomplete, or incorrect information and that the applicant has failed to correct or supplement the false, incomplete, or incorrect information within a reasonable time after the building official requests that the information be corrected or supplemented.
 4. The building official shall deny an application for a certificate of occupancy if the building official determines that the applicant does not possess a required city license, permit, or registration to operate the use or occupancy. Past inspections of the Properties by the Fire Department have revealed that Buckley Oil does not possess required city permits.
- On August 3, 2012, Assistant City Attorney Andrew M. Gilbert who is assisting the Building Official submitted a notebook of information (and disc) entitled "Appeal to Board of Adjustment RE: BDA 101-068, 101-069, & 101-070, Properties Located at 1803, 1809, and 1811 Rock Island St. City of Dallas' Exhibits 1 through 43." (A cover memo attached stated that "by copy of this letter, a copy of same is being delivered to counsel of record." In addition, discs of this information were mailed to the board members and a copy of the notebook was hand-delivered to the Assistant City Attorney to the Board of Adjustment).
 - On August 3, 2012, Arthur J. Anderson of Winstead (the applicant) submitted information related to BDA 101—068, 069, and 070. (Discs of this information were mailed to the board members and mailed and/or hand-delivered to the Assistant City Attorney assisting the Building Official and the Assistant City Attorney to the Board of Adjustment).
 - If the Board of Adjustment upholds the Building Official's May 18, 2011 decision, the application for a certificate of occupancy on the property located at 1803 Rock Island Street will remain denied.
 - If the Board of Adjustment overturns/reverses the Building Official's May 18, 2011 decision, the application for a certificate of occupancy on the property located at 1803 Rock Island Street will be approved.

BOARD OF ADJUSTMENT ACTION: AUGUST 14, 2012

APPEARING IN FAVOR: Art Anderson, 1201 Elm St., Dallas, TX

APPEARING IN OPPOSITION: No one

APPEARING FOR THE CITY: Andrew Gilbert, CAO, 1500 Marilla, 5DN, Dallas, TX

MOTION #1: Hounsel

I move that the Board of Adjustment in Appeal No. **BDA 101-070** suspend the rules and accept the evidence that is being presented today by the applicant.

SECONDED: **Schweitzer**

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #2: **Agnich**

I move that the Board of Adjustment in Appeal No. **BDA 101-070** suspend the rules and accept the evidence that is being presented today by the city.

SECONDED: **Hounsel**

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

MOTION #3: **Nolen**

I move that the Board of Adjustment in Appeal No. **BDA 101-070** suspend the rules and accept the evidence that is being presented today by the city.

SECONDED: **Agnich**

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)

Break: 2:07 P.M.

Resumed: 2:17 P.M.

MOTION #4: **Schweitzer**

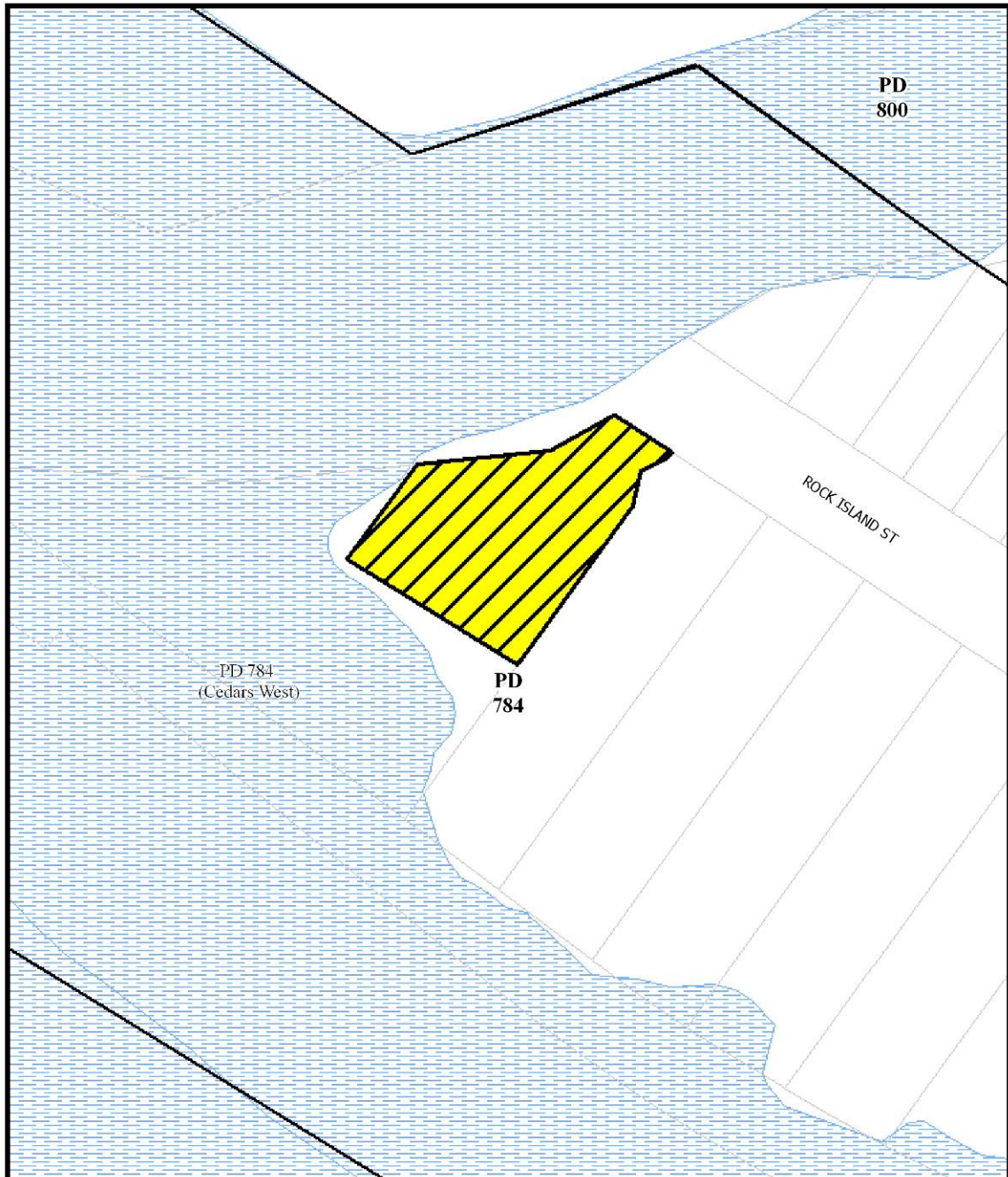
I move that the Board of Adjustment in Appeal No. **BDA 101-070**, hold this matter under advisement until **October 16, 2012**.

SECONDED: **Agnich**

AYES: 5 – Moore, Schweitzer, Hounsel, Nolen, Agnich

NAYS: 0 -

MOTION PASSED: 5– 0 (unanimously)



1:1,200

ZONING MAP

Case no: BDA101-070

Date: 7/26/2012



1:1,200

AERIAL MAP

Case no: BDA101-070

Date: 7/26/2012



~~BDA~~ BDA 101-068, 069, 070
Submitted by
Andrew Gilbert
at the 8-14-12
briefing SK

8-14-12

August 14, 2012

City of Dallas Board of Adjustment, Panel A
1500 Marilla, 5BN
Dallas, Texas 75201

Via Hand-Delivery

Attach A
pg 1

RE: Properties at 1803 and 1809 Rock Island Street (the "Properties") owned by Buckley Oil Company ("Buckley"); BDA 101-068, 101-069, and 101-070

Dear Panel Members:

This letter responds to the letter sent to you by Art Anderson on August 3, 2012. Buckley's Properties have multiple serious violations of the Dallas City Code. The Dallas Fire Department has determined the Properties present a substantial danger of injury to the public. There are no permits for the vast number of storage tanks for flammable and combustible liquids installed on the Properties since 1957, and for other hazardous operations. The City's Exhibit 30 is the only approved permit for above-ground storage tanks on the Properties, and it authorizes the 21 tanks that were installed in 1957.¹ By comparing the City's Exhibits 1-12, the Board can see that the number of tanks at the Properties has almost quadrupled in the years since 1957. Specifically, by comparing the City's Exhibits 2, 4, and 12, the Board can see the number of tanks roughly double from 1962 to 1985, and double again from 1985 to 2011. Through the years, the City has attempted to work amicably with Buckley to achieve compliance with the Code, which would considerably reduce the dangers on the Properties. The efforts have been unsuccessful because Buckley does not wish to incur the expense of complying.

Summary of issues under consideration²

There are only two issues for the Board to consider: (1) did the building official properly deny Buckley's application #1008021063 and #1008021064 for a certificate of occupancy ("CO"); and (2) did the building official properly revoke CO #0110101005 (attached as Exhibit "A") for 1809 Rock Island. The City Code provides the building official shall deny a CO if a property owner does not comply with the codes,³ if the application contains false or incomplete information,⁴ or if the applicant does not possess a required city permit to operate the use.⁵ The City Code further provides the building official shall revoke a CO if Buckley's operation presents a substantial danger of injury or adverse health impact to any person or property and is in violation of the law.⁶ Anderson's letter wrongly states that the building official can *only*

¹ City's Exhibit 30

² The City agrees that Buckley has a CO for a warehouse use on 1811 Rock Island. There were no actions taken by the building official concerning 1811 Rock Island that are the subject of Buckley's appeal.

³ Dallas City Code, Chapter 52, § 306.5(1)

⁴ Dallas City Code, Chapter 52, § 306.5(3)

⁵ Dallas City Code, Chapter 52, § 306.5(4)

⁶ Dallas City Code, Chapter 52, § 306.13(3)

revoke if the facilities are a substantial danger. The City Code also provides the building official may revoke a CO if a required permit has not been issued, has been revoked, or expired.⁷

The building official properly denied the certificate of occupancy for 1803 Rock Island

There is no CO for 1803 Rock Island Street. Buckley’s misunderstanding has created confusion regarding the correct address for 1803 Rock Island. While Buckley may have purchased the Properties together, they are all separately platted with separate addresses and there is no dispute that 1803 is a separate property (or “tract”) requiring a separate CO. In fact, Buckley’s warranty deed shows the two tracts as separate lots. Buckley has never had a CO for any use for 1803 Rock Island.

Buckley alleges that there was a “clerical error” in failing to issue a CO for 1803 Rock Island when it applied for one at 1809 in 2001. There was no clerical error and Buckley’s time to appeal any determination from 2001 has expired.⁸ First, if Buckley applied using the wrong address, then it is not the City’s error. Second, no CO was ever issued for more than 21 tanks at 1809 Rock Island. Third, Buckley later applied for a CO for a petroleum product storage and wholesale use at 1803 Rock Island on March 17, 2008. Buckley did not request an inspection before the 120th day after the application was filed. The CO application for the petroleum product storage and wholesale use therefore expired and was void *ab initio*.⁹ The City did not make an error by not issuing a CO for 1803 Rock Island.

Buckley wrongly claims that it obtained a permit to construct seven tanks at 1803 in 2001. Buckley was preliminarily issued a permit to construct seven tanks at the location it described as 1809 Rock Island, with the note that the fire department must first approve and that Buckley must first obtain a CO. (COD 521) The tanks were placed on 1803 Rock Island without the Fire Department’s approval and without any CO. Buckley never requested any inspections, the City red-tagged the permit and it expired.

The building official properly revoked the certificate of occupancy for 1809 Rock Island

The building official properly revoked the CO for 1809 Rock Island (attached hereto as Exhibit “A”). The CO for 1809 Rock Island was updated to add the petroleum product storage and wholesale use with a note that only the original 21 storage tanks were permitted.¹⁰

Buckley fails to squarely address the issue of permits for its aboveground storage tanks. Buckley vaguely claims that “numerous tanks were installed in the 1957 timeframe.” Buckley’s owner R.E. Dodson, and paid consultant, Olen Long, have previously claimed that “**All tanks except seven were installed in 1957,**” when the photos of the Properties reveal otherwise. (City’s Exhibits 1-12)

Additionally, Buckley tries to blame the City for bad recordkeeping. The City believes its fire and building permit records for the Properties are complete, and that no documents are missing

⁷ Dallas City Code, Chapter 52, § 306.13(5)

⁸ Dallas City Code, Chapter 52, § 306.15

⁹ Dallas City Code, Chapter 52, § 306.4.2

¹⁰ See City’s Exhibit 16; City’s Exhibit 19, p. 12 (confirming the City has updated Buckley Oil’s certificate of occupancy)

or misplaced. Also, both the 1991 Fire Code and the 2006 Fire Code require Buckley Oil to maintain all permits.¹¹ Since the number of tanks at Buckley's properties has almost quadrupled since 1957, it defies logic that the City would have the oldest permit and not any newer permits. For Buckley to be correct, the City would have to "misplace" permits for approximately 60 tanks that have been installed, moved, and/or removed over the course of 55 years.

Buckley failed to provide requested information

Buckley refers to certain bases for revocation as "hypertechnical defect complaints." However, since Buckley failed to respond to the building official's request, the building official properly revoked the CO. Buckley contends that it provided all information on the City's CO checklist. However, the City Code provides the building official may request additional information.¹² Buckley's response was deficient.

Buckley Oil is in violation of the Fire Code at 1809 and 1803 Rock Island

If Buckley is violating the Fire Code, then the building official properly denied the CO applications for 1803 and 1809 Rock Island. Additionally, the building official properly revoked the CO for 1809 Rock Island if the Properties constitute a substantial danger to or required permits have not been issued. Chief Carlin's memo was not the only evidence of the violations or dangers.

As the record shows, the Properties have multiple serious violations of the Dallas Fire Code. In particular, failing to obtain a permit for storage, handling, or use of Class I, II, or IIIA liquids violates the Dallas Fire Code.¹³ In addition, failing to obtain acceptance tests for tanks being placed into service violates the Dallas Fire Code.¹⁴

There are many other violations of the Fire Code for which Buckley has been previously placed on notice.¹⁵ For example, the Fire Department has given numerous written notices to Buckley of fire code violations, including on January 10, 2003, January 17, 2003, April 15, 2003, August 31, 2007, January 7, 2009, February 19, 2009, and again on June 5, 2012.¹⁶ In addition, fire inspectors told Buckley about violations at other times. Before making any decisions at issue in this proceeding, the building official met with inspectors from the Fire Department on the dangers at the Properties. Considering the number, extent, and significance of all of the violations together, there is a substantial risk of injury on and near the Properties. *See also* City's Exhibit 29.

Buckley presents a substantial danger of injury to persons or property

The City's fire marshal and other fire inspectors have determined that Buckley presents a substantial danger of injury. Chief Carlin's memo is only one example. Buckley has the burden

¹¹ See 1991 Dallas Fire Code § 4.105; 2006 Dallas Fire Code § 107.2.1

¹² Dallas City Code, Chapter 52, § 306.3.1(5)

¹³ See Dallas Fire Code § 105.6.16

¹⁴ See Dallas Fire Code § 3404.2.12.1

¹⁵ See e.g. City's Exhibits 1-14, 19, 29, and 30-43

¹⁶ See Exhibits 29, 32-38

to show that the building official erred and that the Properties are in compliance.¹⁷ Buckley did not timely submit any direct evidence indicating that the facility is safe. Buckley claims that it does not present a substantial danger of injury. Yet, it only makes statements to the effect that “the City has presented no evidence,” and that “it must be presumed” that Buckley is safe because they have been operating “without incident” and have “received numerous permits.”

The City has not determined that Buckley’s Properties are safe. Inspections conducted by various city departments or other governmental agencies do not “condone” or “approve” of the condition of the Properties. Many of these inspections were conducted for reasons not mentioned by Buckley. For example, EPA and TCEQ do not inspect to verify compliance with the Fire Code or for permits. Also, the fact that Buckley might not have ever received a citation is no evidence that the Properties comply. Finally, all persons having dealings with a city are presumed to know its ordinances and are charged with notice of ordinance requirements.¹⁸

A. Buckley has unpermitted tanks containing flammable and combustible liquids.

Buckley says there is confusion regarding the City’s perception of the land areas identified by the addresses of 1803 and 1809 Rock Island, but fails to explain the significance. As Buckley should know, there is no confusion that it has unpermitted tanks and operations on both 1809 and 1803 Rock Island. (COD 458) Part of Buckley’s confusion appears to be due to it’s mistaken belief that 1803 Rock Island did not have a separate address from 1809 Rock Island.

By obtaining Building Permit No. 67069 dated March 27, 1957, Buckley Oil obtained a permit to install at most 21 storage tanks at 1809 Rock Island Street. Buckley states that it was not required to obtain permits for tanks that would not contain flammable liquids. First, Buckley *was* required to obtain permits for the other tanks that may have been installed in 1957. The 1951 Dallas Building Code required a building permit for *any* structure, including a storage tank. *See* 1951 Dallas Building Code § 201(A). Moreover, Buckley cannot show that all the additional tanks were installed in 1957, when they were clearly not.

Second, the Dallas Fire Code explicitly provides that the City can apply the Fire Code retroactively if the fire marshal determines that the existing structures, facilities, and conditions constitute a distinct hazard to life or property. *See* Dallas Fire Code § 102.1(4). Courts have also consistently held that fire code regulations can be applied retroactively.¹⁹

B. Buckley’s tanks are too close to each other inside inadequate diking.

Buckley says that its diking is sufficient to contain a spill. Even assuming that the tanks were all installed in 1957, the tanks are not spaced three feet from each other, as was required in 1957. However, the number of tanks has nearly quadrupled since 1957. The tanks are not spaced appropriately and some tanks have no clearance at all. Buckley’s consultant, Olen Long, submitted a diking plan to the City which was rejected because the design was flawed. (City’s Exhibits 32, 33, 40)

¹⁷ Dallas City Code, Chapter. 52, §306.15

¹⁸ *See, e.g., Board of Adjustment of City of San Antonio v. Nelson*, 577 S.W.2d 783, 786 (Tex. Civ. App.—San Antonio 1979, writ ref’d n.r.e)

¹⁹ *Queenside Hills Realty Co., Inc. v. SACL*, 328 U.S. 80 (1946); *Pierce Oil Corporation v. City of Hope*, 248 U.S. 498 (1919); *Crazy Water Retirement Hotel v. State of Texas*, 54 S.W.3d 100 (Tex. App.—Eastland 2001, no pet.).

C. Buckley stores Class I and II liquids together in the same diked area.

Buckley states that it is not storing incompatible liquids in the same diked area. Class I and II liquids are being stored too closely in the same diked area.²⁰ Incompatible liquids cannot be stored together in the same, unapproved, diked area.²¹ The National Board of Fire Underwriters Standards cited by Buckley is a document that may have discussed fire safety standards in 1941. The number of tanks at the Properties has nearly quadrupled since the first tanks were installed in 1957.

D. Buckley has not provided a foam fire extinguishing system or equipment on the Properties.

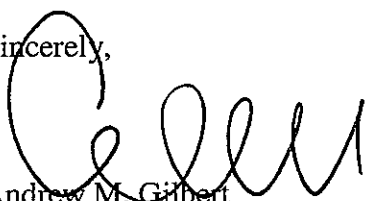
Buckley admits it is in violation of the Fire Code by not having a foam fire extinguishing system. The Fire Code requires Buckley to provide and maintain foam fire protection for aboveground storage tanks that are less than 50 feet apart.²²

E. A fire at the Properties would likely be devastating.

The Dallas Fire Department remains concerned that, as a result of the storage tanks being too close to each other, if an accident occurred on the Properties, the vast majority of the tanks could explode, burn for days cause significant damage to the Properties, could result in the loss of life, and other damage. The fact that an arts festival took place in the area directly contradicts Buckley's claim that it is located in an isolated, heavy industrial area with very few people nearby. Buckley is located in a very populated area, near to other establishments that are open to the public.

The City requests that the Board sustain the decision of the building official and affirm the denial and revocation of the COs for 1803 and 1809 Rock Island Street.

Sincerely,



Andrew M. Gilbert
Senior Assistant City Attorney

Cc:

Via Hand-Delivery
Arthur J. Anderson
5400 Renaissance Tower
Dallas, Texas 75270

²⁰Dallas Fire Code § 3404.2.9.5.2

²¹Dallas Fire Code § 2703.9.8

²²Dallas Fire Code § 3404.2.9.1.1

SDA 101-068, 069, 070
Submitted by Bert
Vandenberg at the
8-14-12 briefing.
SAT

Attch B
P 91

304.9.2 Final. To be made after structure is completed. To pass final inspection, all zones of the system must comply with the submitted irrigation design and must comply with current code and local and state water conservation requirements. Building inspection must also be provided with a receipt of the required test report for the installed backflow prevention device. (Ord. 27107)

304.10 Other inspections. In addition to the called inspections specified in this section, the building official may make or require any other inspection of any construction work to ascertain compliance with the codes and other applicable city ordinances. (Ord. 26029; 27107)

304.11 Reinspection. For the purpose of determining compliance with Section 104.6, the building official may cause any structure to be reinspected. (Ord. 26029; 27107)

304.12 Periodic inspections. Where the concealment of work proceeds continuously, the building official shall schedule periodic inspections. (Ord. 26029; 27107)

SECTION 305 SPECIAL INSPECTIONS

305.1 General. Refer to Section 1704 of the *Dallas Building Code*, as amended. (Ord. 26029)

SECTION 306 CERTIFICATE OF OCCUPANCY

306.1 Use or occupancy. No structure or land shall be used or occupied, no change in the existing occupancy classification, zoning use, or the tenant or occupant of a structure or portion of a structure shall be made, and no floor area increases or decreases of any existing tenancy area of a structure shall be used or occupied, until the building official has issued a certificate of occupancy and a fee has been paid as required in Section 303 of this chapter.

Exception: No certificate of occupancy is required for single family uses, handicapped group dwelling unit uses, duplex uses, U occupancies accessory to single-family or duplex uses, and tenant changes to individual dwelling units in Group R, Division 2 apartment houses. (Ord. 26029; 26579; 27107)

306.2 Change in use or occupancy. A change in the character, use, or occupancy of a building shall not be made except as specified in Chapter 34 of the *Dallas Building Code*. (Ord. 26029; 26579)

306.3 Application for a certificate of occupancy.

306.3.1 Application requirements. A person seeking a certificate of occupancy shall submit an application to the building official on a form approved by the building official. The application must include the following information:

1. The name and address of the use or occupancy.

2. The name, address, and telephone number of the owner of the structure and land.
3. The name, address, and telephone number of the operator of the use or occupancy.
4. A description of the use or occupancy that will be operated.
5. Any other information, plans, diagrams, computations, specifications, or other data or supporting documents the building official deems necessary, including an affidavit containing a detailed description of the use or occupancy that will be operated, the goods or services offered or produced, the hours of operation, and whether a city, county, state, or federal license, permit, or registration is required to operate the use or occupancy. (Ord. 26579)

306.3.2 Establishment selling or serving alcoholic beverages. Any person applying for a certificate of occupancy for an establishment that will sell or serve alcoholic beverages as defined in the *Texas Alcoholic Beverage Code* shall file an affidavit with the building official stating whether the establishment that will derive less than 50 percent, 50 percent or more, or 75 percent or more of its gross quarterly (three-month) revenue from the sale or service of alcoholic beverages for on-premise consumption. Any person owning or operating an establishment that sells or serves alcoholic beverages shall, upon request, supply the building official, within 30 days of the date of the request, with all records needed to document the percentage of gross revenue on a quarterly (three-month) basis derived from the sale or service of alcoholic beverages, including all sales tax returns for the period filed with the Texas Comptroller of Public Accounts and all applications for a permit or license for the period filed with the Texas Alcoholic Beverage Commission. The building official may grant one extension of time for a period not to exceed 30 days upon good cause shown. (Ord. 26579)

306.4 Expiration of application.

306.4.1 Application submitted in conjunction with an application for a construction permit. An application for a certificate of occupancy that is submitted in conjunction with an application for a construction permit shall expire and be void *ab initio* if:

1. no action is taken by the applicant before the 30th day after the building official gives the applicant written notice that additional information, plans, diagrams, computations, specifications, or other data or supporting documents are necessary for issuance of the certificate of occupancy;
2. the application for the construction permit expires; or
3. the construction permit is issued but later expires or is revoked. (Ord. 26029; 26579)

306.4.2 Application not submitted in conjunction with an application for a construction permit. An application for a certificate of occupancy that is not submitted in conjunction with an application for a construction permit shall expire and be void *ab initio* if:

Attach B
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1. no inspection is requested by the applicant before the 120th day after the date of its filing unless one or more extensions are granted under Subsection 306.4.3, in which case the application shall be void *ab initio* if no inspection is requested by the applicant during the extended time period(s);
2. no action is taken by the applicant before the 30th day after the building official gives the applicant written notice that additional information, plans, diagrams, computations, specifications, or other data or supporting documents are necessary for issuance of the certificate of occupancy; or
3. no action is taken by the applicant before the 30th day after the building official gives the applicant written notice that corrections and a reinspection are necessary for issuance of the certificate of occupancy. (Ord. 26029; 26579)

306.4.3 Extensions of time. The building official may grant one or more extensions of time for periods not exceeding 120 days each for justifiable cause. If a request for extension is made by the applicant or the applicant's agent, the request must be in writing and made within the time period sought to be extended. (Ord. 26029; 26579)

306.5 Denial. The building official shall deny an application for a certificate of occupancy if the building official determines:

1. The certificate of occupancy requested does not comply with the codes, the *Dallas Development Code*, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations;
2. The information, plans, diagrams, computations, specifications, or other data or supporting documents submitted with the application clearly show that the use or occupancy will be operated in violation of the codes, the *Dallas Development Code*, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations;
3. The application contains false, incomplete, or incorrect information and the applicant has failed to correct or supplement the false, incomplete, or incorrect information within a reasonable time after the building official requests that the information be corrected or supplemented; or
4. The applicant does not possess a required city, county, state, or federal license, permit, or registration to operate the use or occupancy. (Ord. 26579)

306.6 Issuance. Unless the application for the certificate of occupancy has expired under Section 306.4 or has been denied under Section 306.5, the building official shall issue a certificate of occupancy after a complete application has been filed, a true and correct copy of any required city, county, state, or federal license, permit, or registration to operate has been provided to the building official, and every necessary inspection has been made to determine compliance with the codes, the *Dallas Development Code*, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations. (Ord. 26029; 26579)

306.7 Certificate of occupancy. A certificate of occupancy must contain the following information:

1. The address of the structure or land.
2. The name and address of the owner of the structure and land.
3. The name and address of the operator of the use or occupancy.
4. The use and occupancy, in accordance with the provisions of the *Dallas Building Code* or the *Dallas Existing Building Code*, whichever applies, and the *Dallas Development Code*.
5. The certificate of occupancy number.
6. The zoning district where the structure of land is located.
7. Identification of any required city, county, state, or federal license, permit, or registration to operate the use or occupancy. (Ord. 26029; 26579)

306.8 Partial certificate of occupancy. A partial certificate of occupancy may be issued by the building official for the use or occupancy of a portion of a structure prior to the completion of the entire structure. (Ord. 26029; 26579)

306.9 Temporary certificate of occupancy. A temporary certificate of occupancy may be issued by the building official for the temporary use or occupancy of a portion of a structure. The building official shall set a time period during which the temporary certificate of occupancy is valid. When the temporary certificate of occupancy expires, the holder must obtain a certificate of occupancy authorizing the use or occupancy or cease the use or occupancy. The building official may grant one or more extensions of the temporary certificate of occupancy for periods not to exceed 30 days. If a request for extension is made by the applicant or the applicant's agent, the request must be in writing and made within the time period sought to be extended. (Ord. 26029; 26579)

306.10 Posting. The certificate of occupancy shall be posted in a conspicuous place in the premises and shall not be removed except by the building official. (Ord. 26029; 26579)

306.11 Validity. The issuance of a certificate of occupancy does not grant any vested right or give authority to violate any provision of the codes, the *Dallas Development Code*, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations. Any certificate of occupancy presuming to give authority to violate any provision of the codes, the *Dallas Development Code*, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations shall be void *ab initio*. The issuance of a certificate of occupancy shall not prevent the building official from later requiring the correction of errors in any information, plans, diagrams, computations, specifications, or other data or supporting documents, or from preventing a use or occupancy in violation of the codes, the *Dallas Development Code*, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations. (Ord. 26029; 26579)

306.12 Voiding of certificate of occupancy.

306.12.1 Void *ab initio*. A certificate of occupancy shall be void *ab initio* if the use or occupancy authorized by that certificate of occupancy is not commenced before the 120th day after the date of its issuance unless one or more extensions are granted under Subsection 306.12.2, in which case the certificate of occupancy shall be void *ab initio* if the use or occupancy is not commenced during the extended time period(s). (Ord. 26029; 26579)

306.12.2 Extensions of time. The building official may grant one or more extensions of time for periods not exceeding 120 days each if the building official finds that circumstances beyond the control of the holder of the certificate of occupancy have prevented the use or occupancy from being commenced. If a request for extension is made by the applicant or the applicant's agent, the request must be in writing and made within the time period sought to be extended. (Ord. 26029; 26579)

306.12.3 Void. A certificate of occupancy shall be void if:

1. A specific use permit required by the *Dallas Development Code* to operate the use or occupancy expires; or
2. A compliance date for the use or occupancy set by ordinance or the board of adjustment in accordance with the *Dallas Development Code* has passed. (Ord. 26579)

306.13 Revocation of certificate of occupancy. The building official shall revoke a certificate of occupancy if the building official determines that:

1. the certificate of occupancy is issued in error;
2. the certificate of occupancy is issued on the basis of false, incomplete, or incorrect information supplied;

3. a use or occupancy is being operated in a manner that is a substantial danger of injury or an adverse health impact to any person or property and is in violation of the codes, the *Dallas Development Code*, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations;
4. the structure or portion of the structure is a substantial danger of injury or an adverse health impact to any person or property and is in violation of the codes, the *Dallas Development Code*, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations;
5. a required city, county, state, or federal license, permit, or registration to operate the use or occupancy has not been issued, has been revoked, or has expired;
6. the holder of the certificate of occupancy has refused, upon request, to supply the building official with records needed to document the percentage of gross revenue on a quarterly (three-month) basis derived from the sale or service of alcoholic beverages within the required time period; or
7. the use or occupancy authorized by the certificate of occupancy has been discontinued for six months or more. (Ord. 26029; 26579)

306.14 Written notice. Written notice of any action taken or determination made by the building official under this section must be given to the owner of the structure and land and to the operator of the use or occupancy at the address shown on the certificate of occupancy by certified mail with a five-day return receipt requested or by hand-delivery. Except when a compliance date has been set in accordance with the *Dallas Development Code*, the notice must state that the action taken or determination made by the building official is final unless appealed. The fact that the notice is returned undelivered or that the return receipt is not signed by the addressee shall not affect the validity of the notice. (Ord. 26579)

306.15 Appeal of actions and determinations. Any action taken or determination made by the building official under this section shall be final unless appealed as follows:

1. If the action taken or determination made was pursuant to the codes, an appeal must be made to the building inspection advisory, examining, and appeals board in accordance with Section 208 before the 15th day after written notice of the action taken or determination made is given in accordance with Section 306.14; or
2. Except as provided in Paragraph 3, if the action taken or determination made was pursuant to the *Dallas Development Code*, an appeal must be made to the board of adjustment in accordance with the *Dallas Development Code*.
3. A certificate of occupancy that is void because a compliance date for the use or occupancy set by ordinance or the board of adjustment in accordance with the *Dallas Development Code* has passed may not be appealed under this subsection. (Ord. 26029; 26579)



Certificate of Occupancy

City of Dallas

Address: 1809 ROCK ISLAND ST 75207 **Issued Date:** 11/16/2001

Owner: R E DODSON
001809 ROCK ISLAND ST DALLAS TX 75207

DBA: BUCKLEY OIL COMPANY

Land Use: (6379) OFFICE SHOWROOM/WAREHOUSE

C.O.#: 0110101005

Lot:	Block:	Zoning:	IM	PDD:	0	SUP:
Historic Dist:	Consrv Dist:	Pro Park:	0	Req Park:	0	Park Agrmt:
Dwlg Units:	Stories:	Occ Code:	B1	Lot Area:	0	Total Area:
Type Const:	Sprinkler:	Occ Load:		Alcohol:	N	Dance Floor:

Remarks: SAME USE
This CO includes a petroleum product storage and wholesale use with 21 tanks see building permit from 1957. This CO does not mean that the operator is in compliance with the Fire code and other city codes.

Zaida Basora

Zaida Basora, Building Official

BDA 101-068, 069, 070
submitted by Andrew Gilbert
at the
8-14-12
hearing

Attach C

This certificate shall be displayed on the above premises at all times.
Development Services Department | Building Inspection Division | 214/948-4480 | www.dallascityhall.com

BDA 101-068, 069, 070
Submitted by
Art Anderson at
the 8-14-12
hearing
Attach P pg 1

LINDA HENRY TESTIMONY

My name is Linda Henry. I am Vice President of Facility Compliance and Regulatory Affairs for all locations of Buckley Oil and have been a Hazardous Materials Technician and Specialist since 1993, I also have training as Safety Officer and Incident Command System all from Georgia Tech which is one of the top three rated HazMat schools in the U.S. My last certification was in December 2009. I'm also registered with FEMA Emergency Management Institute to serve in times of crisis. I've been involved with the chemical industry for over 35 years.

The petroleum business is a very highly regulated industry. Buckley is a bulk wholesale distributor and I have worked at the Dallas facility for almost 10 years. Part of my responsibilities include reporting to local, state and federal agencies. Other areas of responsibility include safety, health, environmental and regulatory compliance issues which extends to the Department of Homeland Security, Department of Transportation, Federal Motor Carrier Safety Administration, Texas Dept. of Public Safety-Motor Carrier Bureau. We are also a member of NACD or National Association of Chemical Distributors, which is recognized by the EPA. We are audited every three years by third party services to insure we are in compliance with all 45 sections of the audit. Buckley has passed every audit.

Buckley's Dallas facility has 30 employees and serves over 2000 businesses in the DFW area. Buckley has been honored by the Dallas Historical Society as one of the longest-running businesses in Dallas. I am proud to be a Buckley employee and am very proud of Buckley's track record as being a safe workplace. Our safety training and maintenance are continuous...they never stop. Buckley takes its responsibilities to maintain safe facilities and a safe truck fleet very seriously. Buckley is regulated by numerous federal and state agencies, as

Attach D
Pg 2

well as locally by the City of Dallas Public Works & Transportation-Storm Water Mgmt Div., Air Pollution Control Div.; Environmental & Health Services departments, including inspections from Dallas Fire Department both from Station #4 and the Education and Inspection Division. Our facility is inspected almost always annually by either the local station or the Education-Inspection division and numerous other times by a number of governmental entities. We produce at least six reports each year to various agencies and report monthly to the state and EPA. Buckley prides itself on being courteous toward City and other governmental employees and responsive to any concerns that are raised. I have personally met numerous times with DFD employees on-site and Buckley has cooperatively addressed any and all issues up until the City's recent attempts to terminate Buckley's business.

It is important to understand the two primary types of materials stored at Buckley's facility. They are typically petroleum based motor-lube oils or petroleum based solvents. Different types of liquids have different flashpoints which designate what class they would fall into and therefore are subject to different standards or categories of fire hazard rating. For example, many of our tanks contain motor or engine oils, and lubes which would be of the same type used in your personal vehicle. These varying lubricants and transmission fluids are considered combustible products and don't have an explosive nature as such. A flammable liquid is more volatile. When the original tanks were installed at 1809, all of the tanks **were not** required to obtain permits under the Fire Code in effect at that time. The City's 1957 building permit authorized the installation of 21 tanks for flammable liquids. The City did not require permits for the numerous tanks that were installed to hold combustibles like lube oils and the like. That's the reason the 1958 and 1962 aerials show significantly more than 21 tanks on the property.

The City's attempts to shut down Buckley's business started around 2008 when the City began rezoning lands along the Trinity River for high-rise condominiums and mixed-use commercial

Attach D
B3

developments. Then came the recession and the City's interest was not as great. In fact, the City offered to look for alternative sites for Buckley to relocate. Now as real estate development activity in this area has picked up the City revoked our CO and wants us to shut down. The City revoked its offer to find alternative sites to relocate. They state there is no alternative site to relocate to.

As the Buckley employee with the responsibility for governmental compliance and safety, I am offended by the building official's and Assistant Chief Carlin's statements that Buckley's use is being operated in a manner that is a substantial danger of injury or an adverse health impact to any person or property and is in violation of the codes, the Dallas Development Code, or other city ordinances, rules or regulations. We have an excellent operations record and there is no basis for Chief Carlin's claim. Buckley has never had an incident for 55 years. Its track record speaks for itself. Why is Buckley a danger when it has never received a citation and never had a serious incident at the facility?

DFD inspects Buckley at least annually. All of our tanks are above-ground and easily visible. Why is Buckley suddenly a public danger today when it passed 50 years of annual inspections and other agency audits and site inspections?

On June 20, 2012, there was an arts festival held on Rock Island Street. Rock Island runs in front of Buckley's property. I attended the arts festival and saw 100's of spectators, including current and former councilmembers. How could Buckley be considered a public danger when the City of Dallas sponsored a festival with people milling and cars parked in front of Buckley's facility?

Attach D
P54

In 2011 and 2012, representatives of the TCEQ, Dallas' Public Works Management Department and Dallas Environmental and Health Services all inspected Buckley at the request of DFD. None of these agencies found that Buckley posed a risk to persons or property. How can Buckley be considered a public danger when every impartial agency with oversight of Buckley's operations has determined that there is no danger?

I have assisted in preparing numerous building permit and certificate of occupancy applications. The materials submitted to the City in 2010 and 2011 meet all of the requirements for a CO application and are more extensive and detailed than any CO application Buckley has ever submitted. There is no question as to what Buckley was requesting with its CO application, and we request that the Board reverse the building official's decision to deny our CO applications.

I specifically object to the following reasons for denying Buckley's CO application contained in the City's July 18, 2011 letter:

(a) Outlines of fire lanes: The property was developed when there were no fire lane requirements. There is no reason to show fire lanes for a built-out site. We discussed this issue with staff and they indicated they understood showing fire lanes was illogical.

(b) Height of Building One: Building One is not located on 1803 or 1809. The height was addressed on the site plan with the CO.

(c) Sufficient information to categorize the use of buildings: Attachment 5 to the CO application shows this information. The City never asked for additional information during the six months they held the application.

(d) Sufficient information to determine whether mixing and/or dispensing operation in Buildings 3C and F: Attachment 2 to the CO application addressed this issue. In addition, the Tier II report in the possession of the Fire Department.

A Hazel D
PSS

(e) The length of the piping that enters and terminates in Building F: The City's September 23, 2010 letter did not request this information. More importantly, none of the piping enters Building F.

The City building official should not have denied the CO application for 1809 and 1803. In addition, there is no question that the 2001 CO contained a clerical mistake and should have referenced both 1809 and 1803 Rock Island. Buckley requests that the City reverse the building official's revocation of Buckley's CO and to expand the 2001 CO to include 1809 and 1803 Rock Island.

submitted by Art
Anderson at the
8-14-12 hearing
Atch E p 1

OLEN RAY LONG TESTIMONY

My name is Olen Long and I am a professional engineer licensed by the State of Texas, license #93105 in Civil and Mechanical Engineering. I am the President of Long Engineering & Environmental Inc.

Buckley has been a client of mine since 2001. I have consulted for approximately 10 facilities like Buckley's. I signed an affidavit that is in the record, and the statements in the affidavit are true and correct. In 2003, I was asked by R.E Dodson to obtain development permits and any other historical documents that were in the City's files related to 1803-11 Rock Island Street. None of the City departments could find any permits. I personally went down to the permit section and asked if I could go through the microfiche files and they allowed me to do so. I found misfiled the original building permit and CO from 1957. If not for my efforts, it is unlikely that the 1950's permits would ever have been discovered. The City, because it is a large bureaucracy with millions of pages to document, naturally makes mistakes and destroys and misplaces documents several decades old. There are likely other permit approvals for Buckley's facility that the City has not found.

Exhibits 29, 32, 33 and 40 of the City's packet address the dikes located at 1803 and 1809. A dike is the concrete wall around the tanks. The purpose of the dike is to control potential spills. The dikes that are located on the Property meet the code requirements at the time they were built. These same dikes have been used to control spills under the state and local stormwater containment requirements. These dikes were approved by the TCEQ (Texas Commission on Environmental Quality) which has jurisdiction on stormwater runoff issues. My opinion is substantiated in the Industrial Inspection Report by the City's Daniel Cavazos on May 23, 2012 where he states on page 85 of Buckley's packet that "the site is totally contained and does not

discharge” and the “site looks good and there are no issues.” The Fire Department statements that the dikes are not permitted or are unsafe is incorrect.

I have also reviewed Exhibits 27, 28, 29, 42 and 43 of the City’s packet. The City incorrectly identifies the Dallas ordinances that apply to Buckley’s facilities as the current codes. I have addressed this issue in several Texas cities and they always apply the Codes in effect at the time of initial permitting, not today’s codes. For example, in 1957 the City did not require tanks with nonflammable fluids such as lube oils to be permitted and inspected. The 1958 and 1962 aerials show that the tanks installed at 1809 Rock Island in 1957 had City of Dallas approval. These tanks would not meet today’s ordinance requirements but they are still legal. Buckley complies with the applicable and relevant rules and regulations.

Finally, I strongly disagree with the statement in the City’s letters that Buckley’s “use or occupancy is being operated in a manner that is a substantial danger of injury or an adverse health impact to any person or property, and is in violation of the Codes, the Dallas Development Code, or other City ordinances, rules or regulations.” Linda Henry runs an excellent facility, and Buckley is one of the best run facilities of its type. There is always a chance, however slight, that an incident might occur. In addition to my personal observation, the fact that no significant incident has occurred over the last 55 years and the fact that the City has annually inspected Buckley clearly shows that the facility does not present a “substantial danger of injury or an adverse health impact to any person or property.”

Thank you for listening to my testimony.

5400 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270

214.745.5400 OFFICE
214.745.5390 FAX
winstead.com

October 5, 2012

ARTHUR J. ANDERSON
direct dial: 214.745.5745
aanderson@winstead.com

VIA HAND DELIVERY

City of Dallas
Board of Adjustment, Panel A
1500 Marilla, 5BN
Dallas, TX 75201

Re: ZBA ## 168, 169, 170 ("Appeals")

Dear Board members:

This letter responds to the letter hand-delivered to you by Andrew Gilbert at the August 14, 2012 briefing. Contrary to Mr. Gilbert's statements, Buckley's property does not have multiple serious violations of the Dallas City Codes and does not present a "substantial danger of injury to the public." The following statements in Mr. Gilbert's letter are in error:

PAGE 1

1. "The City's Exhibit 30 is the only approved permit for the above-ground storage tanks on the property." In addition to the 1957 permit, the City approved a permit to install seven tanks at 1803 Rock Island in 2001. (See attached Exhibit A and City's Exhibit 30). The installation was signed off and approved by the Fire Department's LaTonya Webster, and the City of Dallas had no issues with the installation of these tanks. Despite the fact there was no pressure testing of the lines after their installation, there have been no operational issues with the pipes or tanks installed at 1803 Rock Island. These lines are inspected on an annual basis.

2. "(The 1957 permit) authorizes (only) the 21 tanks that were installed in 1957." This statement is erroneous in two ways. First, the 1957 permit authorized more than 21 tanks. According to the City of Dallas Building Inspector's April 4, 1957 memo, the City building and fire department officials approved the installation of 21 tanks with "flammable liquids." Additional tanks with lube oils were allowed to be installed and not tested or shown on the site plan. Second, more than 21 tanks were installed from 1957-68. The City Attorney's depiction of 21 tanks with white circles is simply an inaccurate depiction. The attached Exhibit B is an enhanced version of the City's 1962 aerial photograph and it shows significantly more than 21 tanks on the properties at that time. Subsequent statements by the city attorney that the number of tanks increased four-fold from 1962-2011 are incorrect.

3. "Through the years, the City has attempted to work amicably with Buckley to achieve compliance with the Code, which would considerably reduce the dangers on the Properties. The efforts have been unsuccessful because Buckley does not wish to incur the expense of complying." The correspondence in the record does not appear to be amicable on the City's behalf. An amicable resolution has not been achieved because the Fire Department is acting unreasonably by demanding that Buckley meet today's Code requirements and remove its tanks to achieve "compliance". Buckley will be unable to continue its business operations with the small number of tanks demanded by DFD, and there is no ability to add more land to the operation. Attached as Exhibit C is a copy of Chief Marsh's August 2, 2010 e-mail which contains the following sentence: "If Buckley Oil is unable to meet code requirements in its current location because there is not enough land to add more diked areas and not enough money to add foam extinguishing system, then relocating to a larger site would be the best option." Buckley's offers to reach a mutually agreeable, reasonable resolution other than a forced relocation were rejected by the City. In fact, the City withdrew its previous offer to find land for Buckley to relocate.

4. "Anderson's letter wrongly states that the building official can only revoke if the facilities are a substantial danger. The City Code also provides the building official may revoke a CO if a required permit has not been issued, has been revoked, or expired." The City Attorney is correct that § 306 of the Code allows the building official to revoke a CO for various reasons. But the May 18, 2011 letter by the building official revoked the CO for 1803 for two reasons. First, under § 306.13.4, the official must show that a "structure" as opposed to a use must be a substantial danger of injury and must violate city codes. By annually inspecting and allowing Buckley's use to continue for 55 years and approving numerous permits, the City admits that Buckley does not present a substantial danger of injury. Therefore § 306.13.4 does not apply. The May 18, 2011 revocation letter also contains a reference to § 306.13.5 which provides for a CO revocation if a required "city, county, state, or federal license, permit, or registration to operate the use or occupancy has not been issued, has been revoked, or has expired." The May 18, 2011 revocation letter refers to a lack of permits for storage, handling or use of Class I, II or IIIA liquids and building permits for storage tanks. Buckley disputes it is in violation. Further, the City's amendment to the Fire Code attached as Exhibit D does not require an operational permit for these liquids. Therefore the "use or occupancy" provision is not met. Further, Buckley submits a report every year stating the type of liquids in every tank which addresses the City's concerns. Further, § 301.1.1 only addresses the construction of structures. It is not a "license, permit or registration to operate the use or occupancy." Even if Buckley does not have all of the building permits the City states it should have (which is in dispute), Buckley has all of the necessary operational permits which means that § 306.13.5 cannot apply. The CO therefore was wrongly revoked.

PAGE 2

5. "Buckley alleges that there was a 'clerical error' in failing to issue a CO for 1803 Rock Island when it applied for one in 1809 in 2001. There was no clerical error and Buckley's time to appeal any determination from 2001 has expired." The City's statement is disingenuous and incorrect. The building permit application and site plan submitted to the City in 2001 showed the seven tanks to be located at 1803 Rock Island. Neither the City nor Buckley caught this mistake. LaTonya Webster of DFD approved the tank installation on March 12, 2001. The building permit attached as Exhibit E dated July 18, 2001, authorized the construction of permits at 1803 despite the reference to 1809 Rock Island. Attached as Exhibit F is the City form dated October 4, 2001 requiring Buckley to apply for a certificate of occupancy for the tanks installed on 1803. Attached as Exhibit G is the certificate of occupancy dated November 16, 2001 which references 1809, despite the fact that Buckley and the City knew that the tanks were installed at 1803. Both Buckley and the City share responsibility for this oversight which can be corrected by the Board to state that the CO applies to both 1803 and 1809.

6. "The tanks were placed on 1803 Rock Island without the Fire Department's approval and without any CO. Buckley never requested any inspections, the City red-tagged the permit and it expired." As shown in Exhibit A, the Fire Department's LaTonya Webster approved and signed off on the application to install the tanks at 1803. The failure to request inspections of the lines after construction was an oversight. However, the intent of the inspection provision has been met as there have been no leaks or spillage in the ten years of operation. Further, Buckley has never received any notice that the City red-tagged the permit which was approved and recorded in the City records. The only evidence is the City's Exhibit 31 which includes the handwritten note at the top of the page which states "Red tagged and withdrawn." There is no "red tag" and the statement is not verified by a signature or date.

7. "Additionally, Buckley tries to blame the City for bad recordkeeping. The City believes its fire and building permit records for the Property are complete, and that no documents are missing or misplaced." It's a fact that the City has historically misfiled approved permits for these properties which constitutes bad recordkeeping. As Olen Long stated in his affidavit which has been introduced, he was able to find permits which the City staff could not find because they were misplaced in the City files. The City does not dispute this statement. Without Buckley's diligent search, it is possible that nobody would have found these permits. Buckley recently asked the City if it could inspect the City's records to find additional misplaced permits, and the City refused Buckley's request. The City cannot claim that there is an absolute certainty that all of the permits have been produced when it knows there has been misfiling in the past and refuses Buckley's request to search City records to find additional permits.

8. "For Buckley to be correct, the City would have to 'misplace' permits for approximately 60 tanks that have been installed, moved, and/or removed over the course of 55 years." As noted above, the City's numerical calculation is all wrong. Second, as discussed above, it would not be surprising at all for the City to misplace these permits. What is more important and significant is the fact that the City inspected the facility virtually every year for decades and never perceived a problem with the number and location of the tanks. If the facility's tanks were not permitted and a danger, the City would have raised this issue decades ago. Further, there is suspicious evidence as to how the City has treated these permits. As stated above, Exhibit G is the copy of the CO for 1809 signed by Ray Wazny (building official at that time) which was given to Buckley on November 16, 2001. Attached as Exhibit H is a copy provided by the City of a different November 16, 2001 CO for 1809 which Buckley had not previously received. It includes a new note in the "Remarks" section and is signed by "Zaida Basora, Building Official." A significant issue with this document is that Ms. Basora was not the building official in 2001. She was the building official from 2008-10. How could Ms. Basora sign a certificate of occupancy issued in 2001?

PAGE 3

9. "Buckley contends that it provided all information on the City's CO checklist. However, the City Code provides the building official may request additional information. Buckley's response was deficient." Buckley acknowledges that a reasonable amount of additional information may be requested. But the requests must be restricted to issues related to the certificate of occupancy request. Ms. Antebi-Taylor's September 23, 2010 letter requesting additional information is attached as Exhibit I. Buckley satisfied most of these requirements. Virtually all businesses in Cedars West were required to obtain certificates of occupancy. The City requested perfunctory information from virtually all of the businesses other than Buckley. In addition, the building official required Buckley to provide information that was impossible to provide. For example, one of the requests in the September 23, 2010 letter was to show "fire lanes" on the properties. According to the Dallas Development Code, a fire lane must be at least 24 feet wide and meet certain radius requirements. Because the site was developed several decades ago, it is physically impossible to locate a fire lane on the site. The building official denied Buckley's CO application, in part, because a fire lane was not provided. While reasonable information can be requested

in the CO process, the City is not allowed to impose impossible conditions as a pretext to deny a CO. Furthermore, Buckley submitted a detailed revised site plan that addressed virtually all of the requested additional information in October 2010. The City received e-mails from Buckley's representative on December 5, 2010, January 4, 2011, March 4, 2011, and May 12, 2011 requesting status updates and asking if the City needed more information without a response. The City apparently was setting Buckley up to fail. After holding the revised CO application for seven months with absolutely no communication with Buckley, the City arbitrary and presumptively denied the CO applications on May 18, 2011.

10. "Buckley did not timely submit any direct evidence indicating that the facility is safe. Buckley claims that it does not present a substantial danger of injury." The direct evidence that the facility is safe is a 55 year track record of safety. The City annually inspected the facility for 55 years and never stated it was unsafe. The City has not met its obligation to prove Buckley operates an unsafe facility. Attached as Exhibit J is additional evidence of Buckley's 2012 certification by the National Association of Chemical Distributors, the premier organization for chemical distributors. Buckley has passed every three year NACD audit by independent third parties who verify Buckley's operation.

11. "There are many other violations of the Fire Code for which Buckley has been previously placed on notice. For example, the Fire Department was given numerous written notices to Buckley of fire code violations, including on January 10, 2003, January 17, 2003, April 15, 2003, August 31, 2007, January 7, 2009, February 19, 2009, and again on June 8, 2012." Here, the City is either intentionally or unintentionally being deceptive. At no time during the 55 years of operation has the City issued a notice of violation or citation to Buckley. Assuming that the City notified Buckley nine years ago that there were violations, then either they were minor in nature or the City must have considered them cured. Further, the "notices of violation" stated by the City refer to provisions in today's Fire Code, not the fire code in effect at the time of the initial permit for Buckley's project pursuant to Chapter 245, Tex. Loc. Gov't Code. According to § 245.002, the City of Dallas is prohibited from enforcing its fire code provisions enacted after the initial permit was filed by Buckley in 1957. There are exemptions to this prohibition as to certain fire code amendments in § 245.004, but these only apply to "a building or structure intended for human occupancy or habitation." Buckley's property is not intended for human occupancy or habitation, so the statutory prohibition against the City's enforcement stands. That being said, Buckley as a good corporate citizen has attempted to comply with all of the new feasible requirements requested by the City.

12. "The 1951 Dallas Building Code required a building permit for any structure, including a storage tank." The 1951 Code does not state that a building permit was required for tanks; it required building permits for structures. The Building Official's interpretation of the Code in 1957 was that tanks with lube oil were not required to obtain building permits.

13. "Courts have also consistently held that fire code regulations can be applied retroactively." There are no Texas court opinions which have held that code regulations can be applied retroactively to commercial uses. Further, the Texas Legislature has determined that a city cannot make these types of retroactive applications when it enacted Chapter 245, Tex. Loc. Gov't Code. The case law cited by the City Attorney does not apply to the facts in this case. For example, two of the opinions address water sprinklers in multi-family buildings. *Queenside Hills Realty Co v. SAXL*, 328 U.S. 80 (1946); *Crazy Water Retirement Hotel v. State of Texas*, 54 S.W.3d 100 (Tex. App.—Eastland 2001, no pet.). ("The record shows that the residents of the Hotel have an average age of 85 and that many of the residents have impaired mobility requiring wheelchairs and walkers."). Other than allowing retroactive application in these limited instances of multi-family buildings (consistent with the Chapter 245 statutory exception), there are no Texas court opinions supporting the City's position.

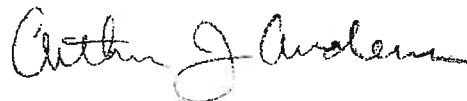
14. "Buckley's consultant, Olen Long, submitted a diking plan to the City which was rejected because the design was flawed." Buckley's diking plan meets the applicable Code requirements. Mr. Long, a licensed Texas engineer, has opined that the diking is adequate. Furthermore, City Exhibits 32 and 33 actually show that the diking plan for the 2001 tank installation was approved by DFD. LaTonya Webster's January 8, 2001 letter states that she "will not be able to approve the design of the diked area." Her follow-up March 12, 2001 letter omits the denial and simply states that she has "reviewed the plans submitted and the following comments have been made." On the building permit site plan attached as Exhibit A, Mr. Webster signed the document approving the diking system and the application to build.

15. "Incompatible liquids cannot be stored together in the same, unapproved, diked area." The Fire Code provisions cited by the City Attorney do not prohibit tanks with Class I and II liquids from being stored in the same area. Class III liquids are not stored with Class I and II liquids. The Code only prohibits corrosive and noncorrosive materials from being stored in the same area. Further, the diked area on the property meet all of the Code requirements in effect at the time they were constructed.

16. "Buckley admits that it is in violation of the Fire Code by not having a foam fire extinguisher system." Buckley admits that § 3404.2.9.1.1 of the Dallas Fire Code contains this provision. However, it does not apply to Buckley because its liquid surface area is less than 1,500 square feet which triggers the requirement. Further, this provision is not mandatory, and the City had not requested a foam system until recently. Finally, this provision was imposed after Buckley's project was constructed and is grandfathered from the foam requirement pursuant to Chapter 245.

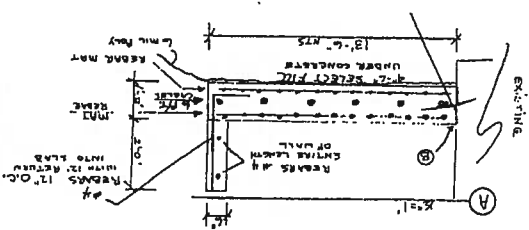
17. "The fact that an arts festival took place in the area directly contradicts Buckley's claim that it is located in an isolated, heavy industrial area with very few people nearby. Buckley is located in a very populated area, near to other establishments that are open to the public." The City's statement that Cedars West is a "very populated area" is nonsensical. Rock Island has industrial businesses historically allowed under the City's Industrial zoning. There are no single-family or multi-family residences in Cedars West. Stating that this is a very populated area is as accurate as the other statements in the City Attorney's letter. Further, to argue that the City's sponsorship of an arts festival on Rock Island for the first time in 55 years means there are large numbers of people who visit Rock Island Street is ludicrous.

Sincerely yours,



Arthur J. Anderson

AJA/plg
Enclosures

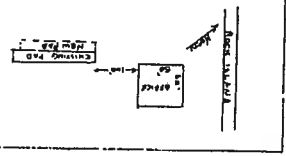
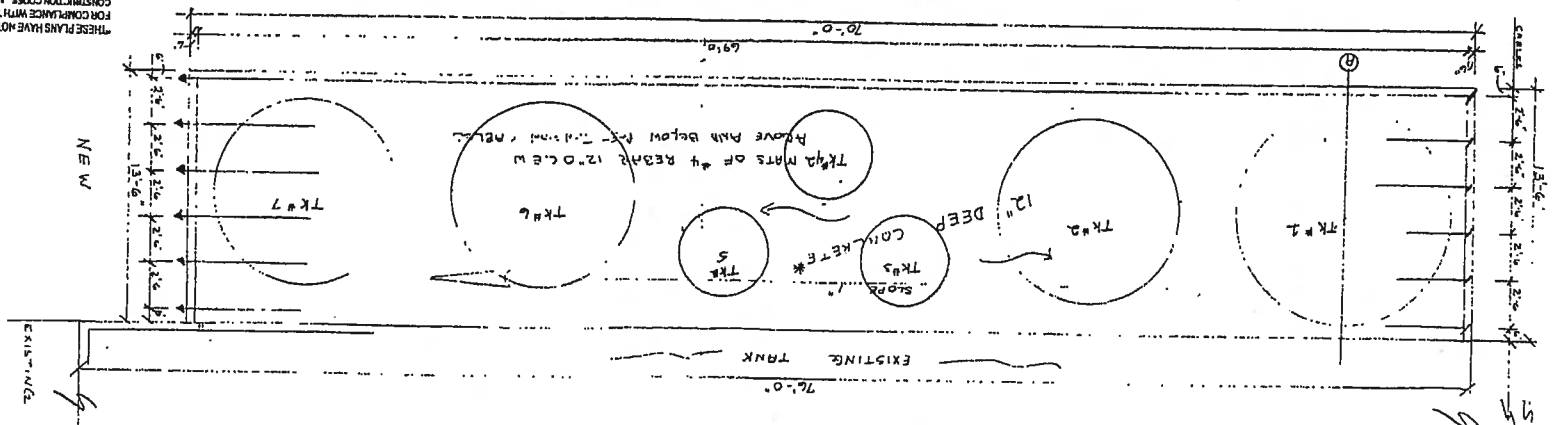


REBAR WILL BE SPACED AS FOLLOWS:

15'-0" PAST	12" MAX
12'-0" PAST	18" MAX
12'-0" PAST	24" MAX

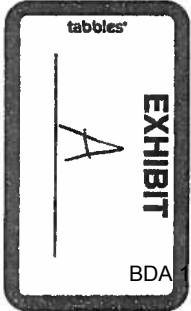
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THESE PLANS HAVE NOT BEEN REVIEWED IN CONNECTION WITH THESE PLANS IS SUBJECT TO FIELD INSPECTORS APPROVAL.

0107181076
1 of 2



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 10%-40% PASSING
 5-50% PASSING

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FOR THESE PLANS HAVE NOT BEEN REVIEWED FOR COMPLIANCE WITH THE CITY OF DALLAS CONSTRUCTION CODES. ALL WORK PERFORMED IN CONJUNCTION WITH THESE PLANS IS SUBJECT TO FIELD INSPECTORS APPROVAL"

REVIEWED

DALLAS FIRE DEPARTMENT

SUBJECT TO APPROVAL OF

REVIEWED BY THE CITY OF DALLAS

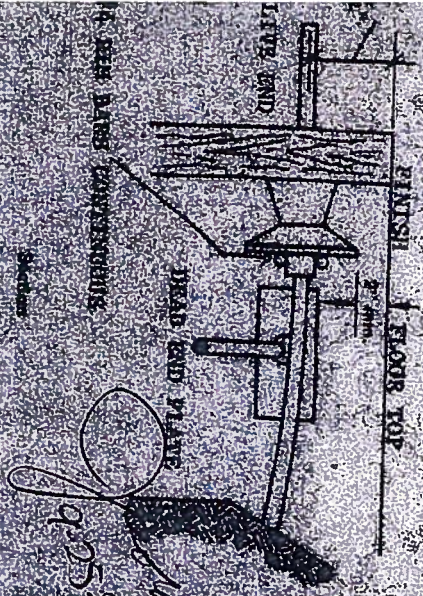
DATE 12-01-2014

FINISH REVISION

Flammable and Combustible Liquid storage and handling shall comply with Article #79 of the Dallas Fire Code.

PLANS 1, 2, 4, 6 AND OR 3/4" CABLE. LENGTH OF 30 0 PSI ALL FROM REINFORCED ELEVATION FROM CORNERS & FACES. TIED TO FORM BOARDS TO 1/2" (2-20# NAILS) FIXED TO THE FORM BOARD AND LIVE ANCHORS POINT TO END ANCHORS WORK IN PLACEMENT DURING POUR. NAILS SHALL BE SUPPORTED BY ANKER EAGLE CLAY BARS, 100% PULL AFTER THE.

(6) MIL POLYETHYLENE UNDER ALL CONCRETE TO REDUCE FRICTION



Jerry Kling & Assoc
 CIVIL ENGINEERS
 400 BOWLING GREEN
 DALLAS, TEXAS 75201
FOUNDATION
 PLANS NO. 1454

THIS PLAN HAS BEEN PREPARED IN ACCORDANCE WITH THE SOIL REPORT AND WITH A GENERAL THE READING PROJECT. WE EXPRESSLY DENY ANY PARTICULAR WARRANTIES OR PARTICULAR DETERMINED BY THE OWNER AND SELLER OF ANY AND SOLE DECISION MAKING PROJECT.

THIS PROJECT HAS BEEN ASSIGNED TO JERRY KLING & ASSOCIATES, INC. (JKA) AND ALL WORK SHALL BE PERFORMED BY JKA. ALL WORK SHALL BE IN ACCORDANCE WITH THE CITY OF DALLAS CONSTRUCTION CODES. ALL WORK PERFORMED IN CONJUNCTION WITH THESE PLANS IS SUBJECT TO FIELD INSPECTORS APPROVAL.

DATE: 12-01-2014
 PROJECT: Buckle Up!
 DRAWING NO: 1454
 SHEET NO: 1 OF 3

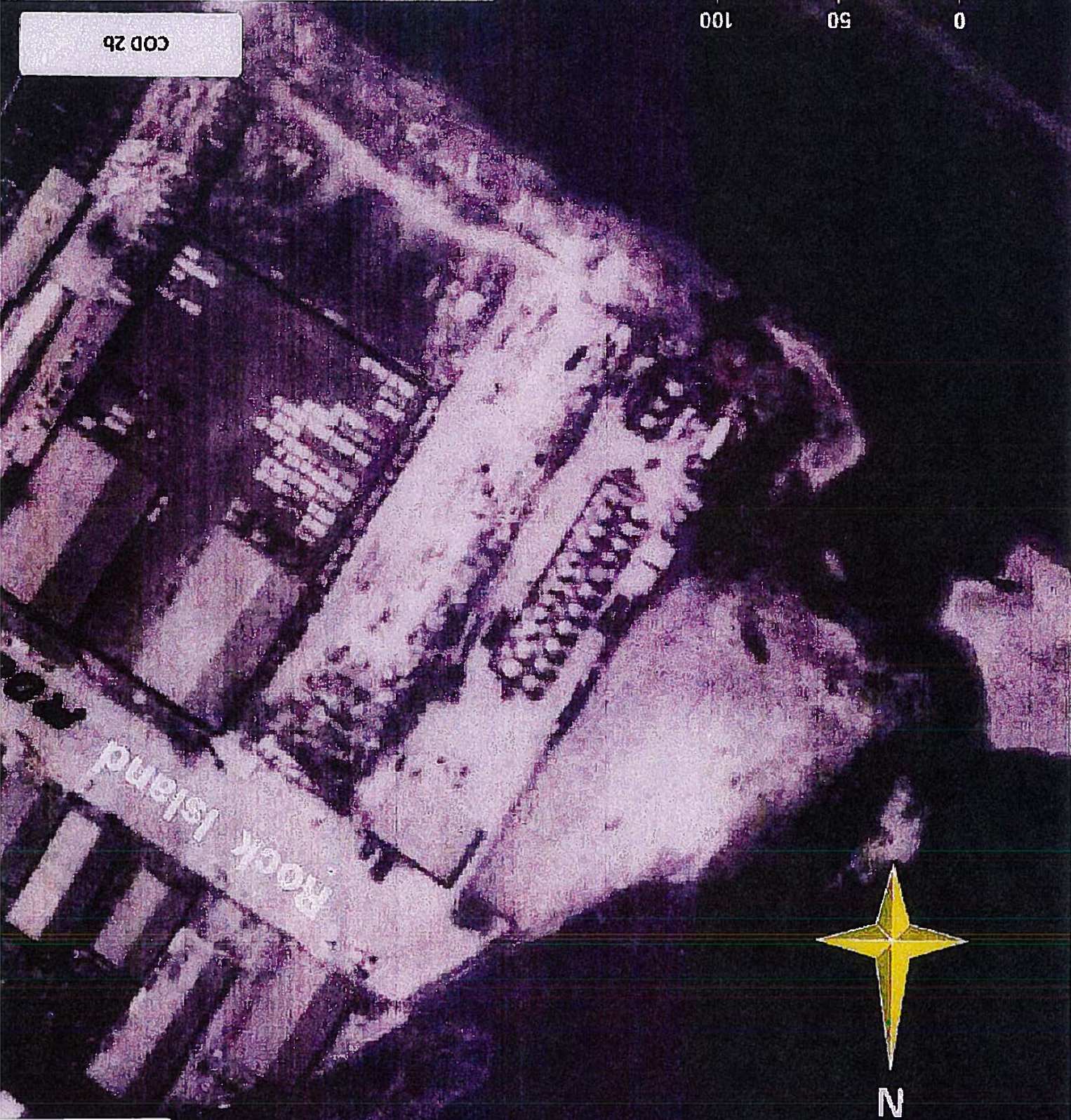
ALL WORK SHALL BE IN ACCORDANCE WITH THE CITY OF DALLAS CONSTRUCTION CODES. ALL WORK PERFORMED IN CONJUNCTION WITH THESE PLANS IS SUBJECT TO FIELD INSPECTORS APPROVAL.

CITY OF DALLAS
PUBLIC WORKS DEPARTMENT
SURVEY DIVISION
1962 Aerial Photography

EXHIBIT
B



COD 2b



Anderson, Art

From: Marsh, Sandra [sandra.marsh@dallascityhall.com]
Sent: Monday, August 02, 2010 9:10 AM
To: Anderson, Art
Subject: RE: Buckley Oil

Mr. Anderson,

You are correct that it is neither this department's nor the City's intent to put anyone out of business but we do require code compliance. If Buckley Oil is unable to meet code requirements in its current location because there is not enough land to add more diked areas and not enough money to add foam extinguishing systems, then relocating to a larger site would be the best option. It is the responsibility of the owner and management of Buckley Oil to provide alternative solutions to the existing code violations. The alternative solutions must provide a level of safety that is equivalent to that provided by meeting the precise code requirements. Please continue seeking alternatives. I have heard no additional information regarding the Trinity River project or its requirements for existing businesses in the affected area since our meeting on July 16th. Hopefully, this situation can be resolved in a manner that is beneficial to all who are involved.

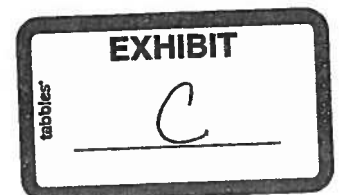
Sandra Marsh, Section Chief
Inspection & Life Safety Education Division
Dallas Fire-Rescue Department
1551 Baylor Street, Suite 400
Dallas, TX 75226
214-670-4375
Fax: 214-670-4324
sandra.marsh@dallascityhall.com

From: Anderson, Art [mailto:aanderson@winstead.com]
Sent: Friday, July 30, 2010 3:28 PM
To: Marsh, Sandra
Subject: RE: Buckley Oil

Chief Marsh, thanks for responding to my email. Our client has reviewed and analyzed your suggestions below. Unfortunately, the separate dike areas would apparently result in the loss of tanks and an uneconomical construction cost that would put Buckley's Rock Island location out of business. As you mentioned at our last meeting and the council stressed at the zoning hearing on the Cedars West PD, the City does not intend or want to put any of the existing businesses out of business. Buckley has made a significant investment in the City of Dallas, pays taxes and employees numerous Dallas residents.

Experience has shown that sound operations is the best way to address fire issues, and it is undisputed that Buckley has some of the best management from an operational standpoint. That's one of the reasons there have been no explosions or serious incidents at the facility since acquired by the current owner. If you have other suggestions that are financially feasible, please let us know so that they can be reviewed and analyzed. Regards, Art Anderson

From: Marsh, Sandra [mailto:sandra.marsh@dallascityhall.com]
Sent: Friday, July 16, 2010 4:09 PM
To: Anderson, Art
Cc: Williams, Kirk
Subject: RE: Buckley Oil



Art,

These systems have to be designed for the application. The only advice that I can give you is to contact 1 - 3 State Licensed fire extinguishing system installers and have them give you a quote for your site. The system would only help out with the tanks that have compatible contents that are too close together. This would not be a satisfactory solution for tanks that should not be stored in the same diked area due to incompatible contents. The diked areas would have to be separated. With side-by-side diked areas a noncombustible partition extending not less than 18 inches above and to the side of the tanks would be required.

Sandra Marsh, Section Chief
Inspection & Life Safety Education Division
Dallas Fire-Rescue Department
1551 Baylor Street, Suite 400
Dallas, TX 75226
214-670-4375
Fax: 214-670-4324
sandra.marsh@dallascityhall.com

From: Anderson, Art [mailto:aanderson@winstead.com]
Sent: Friday, July 16, 2010 3:37 PM
To: Marsh, Sandra
Cc: Williams, Kirk
Subject: Buckley Oil

Chief Marsh,

Thank you for taking the time this afternoon to meet with us and staff. We have taken a look at the options discussed and have the following thoughts:

First, it does not appear that the parking/driveway area on 1803 Rock Island can be used as a relocation area for some of the existing tanks because this area is needed for truck maneuverability.

Second, the existing tanks can't be removed from 1809 and not relocated because this would make the business operation economically infeasible.

Third, we would appreciate if you could provide some more detailed information regarding the fire suppression system you mentioned. Neither Kirk nor I have much knowledge as to what type of system being envisioned, potential manufacturer/installers, construction and maintenance costs, etc. If you could let us know the system that the Fire Department recommends, this will enable Buckley to examine its feasibility for this site.

We look forward to working with you and staff regarding this matter. Regards, Art Anderson

IRS Circular 230 Required Notice—IRS regulations require that we inform you as follows: Any U.S. federal tax advice contained in this communication (including any attachments) is not intended to be used and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or tax-related matter[s].

Information contained in this transmission is attorney privileged and confidential. It is intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone.

5/3/04

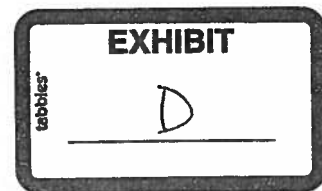
ORDINANCE NO. 25615

An ordinance amending CHAPTER 16, "DALLAS FIRE CODE," of the Dallas City Code, as amended; adopting with certain changes the 2000 Edition of the International Fire Code of the International Code Council, Inc. and the 2000 International Fire Code Standards of the International Fire Code Institute; regulating and governing the safeguarding of life and property from fire and explosion hazards arising from the storage, handling, and use of hazardous substances, materials, and devices, and from conditions hazardous to life or property in the occupancy of buildings and premises, and providing for the issuance of permits for hazardous uses or operations; providing a penalty not to exceed \$2,000; providing a saving clause; providing a severability clause; and providing an effective date.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That CHAPTER 16, "DALLAS FIRE CODE," of the Dallas City Code, as amended, is amended by adopting the 2000 Edition of the International Fire Code of the International Code Council, Inc. (which is attached as Exhibit A and made a part of this ordinance), with the following amendments:

1. Page v, "Sample Ordinance for Adoption of the International Fire Code," is deleted.
2. Subsection 101.1, "Title," of Section 101, "General," of Chapter 1, "Administration," of the 2000 International Fire Code is amended to read as follows:



25615

30. Paragraph 105.6.12, "Cutting and Welding," of Subsection 105.6, "Required Permits," of Section 105, "Permits and Fees," of Chapter 1, "Administration," of the 2000 International Fire Code is amended to read as follows:

"105.6.12 Cutting and welding. A[n ~~operational~~] permit is required to conduct cutting or welding operations within the jurisdiction."

31. Paragraph 105.6.13, "Dry Cleaning Plants"; and Paragraph 105.6.14 "Exhibits and Trade Shows," of Subsection 105.6, "Required Permits," of Section 105, "Permits and Fees," of Chapter 1, "Administration," of the 2000 International Fire Code are deleted.

32. Paragraph 105.6.15, "Explosives," of Subsection 105.6, "Required Permits," of Section 105, "Permits and Fees," of Chapter 1, "Administration," of the 2000 International Fire Code is amended to read as follows:

"105.6.15 Explosives. A[n ~~operational~~] permit is required for the manufacture, transportation, storage, handling, sale or use of any quantity of explosive, explosive material, fireworks, or pyrotechnic special effects within the scope of Chapter 33."

33. Paragraph 105.6.16, "Fire Hydrants and Valves," of Subsection 105.6, "Required Permits," of Section 105, "Permits and Fees," of Chapter 1, "Administration," of the 2000 International Fire Code is deleted.

34. Paragraph 105.6.17, "Flammable and Combustible Liquids," of Subsection 105.6, "Required Permits," of Section 105, "Permits and Fees," of Chapter 1, "Administration," of the 2000 International Fire Code is amended to read as follows:

"105.6.17 Flammable and combustible liquids. A[n ~~operational~~] permit is required:

1. To use or operate a pipeline for the transportation within facilities of flammable or combustible liquids. This requirement shall not apply to the off-site transportation in pipelines regulated by the Department of Transportation (DOTn) (see Section 3501.1.2) nor does it apply to piping systems (see Section 3503.6).

25615

2. To store, handle or use Class I liquids in excess of 5 gallons (19 L) in a building or in excess of 10 gallons (37.9 L) outside of a building, except that a permit is not required for the following:
 - 2.1. The storage or use of Class I liquids in the fuel tank of a motor vehicle, aircraft, motorboat, mobile power plant or mobile heating plant, unless such storage, in the opinion of the code official, would cause an unsafe condition.
 - 2.2. The storage or use of paints, oils, varnishes or similar flammable mixtures when such liquids are stored for maintenance, painting or similar purposes for a period of not more than 30 days.
3. To store, handle or use Class II or Class IIIA liquids in excess of 25 gallons (95 L) in a building or in excess of 60 gallons (227 L) outside a building, except for fuel oil used in connection with oil-burning equipment.
4. To remove Class I or Class II liquids from an underground storage tank used for fueling motor vehicles by any means other than the approved, stationary onsite pumps normally used for dispensing purposes.
5. To operate tank vehicles, equipment, tanks, plants, terminals, wells, fuel-dispensing stations, refineries, distilleries and similar facilities where flammable and combustible liquids are produced, processed, transported, stored, dispensed or used. This shall include tanks, lines, monitor wells and other appurtenances of the tank system.
6. To install, alter, remove, abandon, place temporarily out of service (for more than 90 days) or otherwise dispose of an underground, protected above-ground or above-ground flammable or combustible liquid tank. This shall include tanks, lines, monitor wells and other appurtenances of the tank system.
7. To change the type of contents stored in a flammable or combustible liquid tank to a material which poses a greater hazard than that for which the tank was designed and constructed.
8. To manufacture, process, blend or refine flammable or combustible liquids.
9. To install, construct or alter tank vehicles, equipment tanks, plants, terminals, wells, fuel-dispensing stations, refineries, distilleries and similar facilities where flammable and combustible liquids are produced, processed, transported, stored, dispensed or used.
10. Spraying and dipping operation utilizing flammable or combustible liquids or the application of combustible powders regulated by Chapter 15."

Red tagged +
Withdrawn

CITY OF DALLAS
Building Inspection
320 E. Jefferson Blvd.

PERMIT

Permit Fee: 46.00 Permit#: 0107181076
Value of Work: 3000.00 Issue date: 07/18/01
Land Use Code: 3980 Mapsco Page: 45 /Y Dist: 28
Land Use Description: INDUSTRIAL (INSIDE)
Work Description: INSTALLATION TANK
Address:

1809 ROCK ISLAND ST 75207

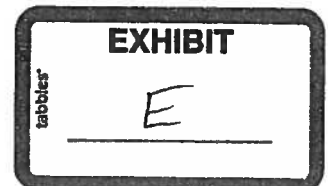
Owner or tenant: BUCKLEY
Address: 1809 ROCK ISLAND ST DALLAS TX 75207
Applicant: DAN GRADY
Contractor: BUCKLEY OIL
Business Address: 1809 ROCK ISLAND ST DALLAS TX 75207
Telephone: 214 421-4147 Fax:

Lot: 015 Block: 73 7342 Act Code: B Dwlg Units:
Work Use: Zoning: IM Own Code: A New Area:
Pro Park: Lot Area: Bedrooms: Stories: 1
Req Park: Totl Area: Baths: Occ Code: B
Sprinkler: Type Const: NA SUP: PDD:

Remarks: SUBJ TO FIRE APPROVAL 214 670-4319/SUBJ TO FLD INSPECTOR APPROVAL
NEED CO BEFORE PERMIT IS FINALLED

This permit is issued on the basis of information furnished in the application and is subject to the provisions of all governing ordinances, which must be complied with, whether or not herein specified.

THIS PERMIT SHOULD BE POSTED AT WORK SITE
AND IS SUBJECT TO CANCELLATION UPON NOTICE.



DATE 10-4-01

DALLAS FIRE DEPARTMENT
GENERAL INSPECTION REPORT

FILE
FS # 00/002042

LOCATION 1809 Rock Island Rd NAME Dan Grady PHONE 214 421 4147
OCCUPANCY Buckley Oil Company ADDRESS _____
PROPERTY CODE: B LTRS: 1 2 3 REINSPECTION DATE(S) _____

Maintaining hazardous conditions is a VIOLATION of City ordinances. The following conditions must be corrected immediately:

- Post ADDRESS visible from the street.
- Provide marking/stripping for all designated FIRE LANES.
- Provide ACCESS to fire department connections.
- MAINTAIN fire lanes free of parked vehicles or other obstructions. ● Security gates must comply with DFD Standard #4.
- SECURELY CLOSE all openings to the building within 48 hours to prevent unauthorized entry.
- Provide and maintain - test - repair - FIRE ALARM system.
- Provide and maintain smoke detectors in approved locations for each RENTAL UNIT.
- PROVIDE one _____ rated portable fire extinguisher for each _____ square feet. Maximum travel distance _____
- SERVICE fire extinguishers and recharge those expended. Annual service required by state licensee.
- MOUNT portable fire extinguishers in conspicuous accessible locations.
- MOUNT portable fire extinguishers so that the tops are not more than 5 feet above the floor.
- Install extinguishing system for COOKING APPLIANCES producing grease laden vapors.
- Service extinguishing systems for commercial cooking applications every 6 MONTHS or after activation.
- Remove GREASE from cooking appliances, vent-hoods, ducts, etc.
- Provide and maintain - repair - extend - service - the automatic SPRINKLER system.
- Provide _____ extra sprinklers and a sprinkler WRENCH.
- Discontinue LOCKING - BLOCKING- exit doors, exit windows, or exit pathways.
- Maintain exit doors and/or windows easily OPENABLE without a key or special knowledge.
- Repair illuminated EXIT SIGNS.
- Remove additional LOCKS or LATCHES from exit doors equipped with panic hardware.
- SEAL penetrations in floors, walls, ceilings with approved material.
- Remove the accumulation of combustible WASTE.
- Secure compressed gas CYLINDERS.
- Provide FLAME PROOFING for combustible decorations, drapes, etc.
- Maintain 30 inch clearance to ELECTRICAL equipment.
- Provide COVERS for electrical outlets, switches, junction boxes, and breaker boxes.
- Discontinue using EXTENSION CORDS as substitutes for permanent electrical wiring.
- Provide metal containers with metal lids for the storage of OILY RAGS.
- Maintain STORAGE 18 inches below sprinkler heads, and 24 inches below the ceiling.
- Provide approved CABINETS for storage of flammable/combustible liquids in excess of _____ gallons.
- Obtain City of Dallas PERMIT for: Certificate of Occupancy
- Post OCCUPANT LOAD sign near main exit.

* 320 E Jefferson Blvd *

214 - 948 - 4480

214 670 7013

A \$30.00 REINSPECTION FEE is charged for the SECOND reinspection and \$60.00 for EACH SUBSEQ

Inspector BDA 104070

EXHIBIT

F



City of Dallas

Certificate of Occupancy

1809 ROCK ISLAND ST 75207

**R E DODSON
001809 ROCK ISLAND ST DALLAS TX 75207**

BUCKLEY OIL COMPANY

(6379) OFFICE SHOWROOM/WAREHOUSE

0110101005

Issue Date: 11/16/2001

Lot:	Block:	Zoning:	IM	PDD:	0	SUP:
Historic Dist:	Consv Dist:	Pro Park:	0	Req Park:	0	Park Agmt: N
Dwlg Units: 0	Stories: 1	Occ Code:	B1	Lot Area:	0	Total Area: 0
Type Const:	Sprinkler:	Occ Load:		Alcohol:	N	Dance Floor: N

Remarks: SAME USE

Building Official

Development Services Department | Building Inspection Division | 214/948-4480 | www.dallascityhall.com

tabbles
EXHIBIT
G

BDA 101-068,
069, & 070
Attach F
Pg 16



City of Dallas

Certificate of Occupancy



1809 ROCK ISLAND ST 75207

Issued Date:

11/16/2001



R E DODSON

001809 ROCK ISLAND ST DALLAS TX 75207



BUCKLEY OIL COMPANY



(6379) OFFICE SHOWROOM/WAREHOUSE



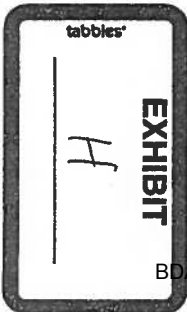
0110101005

Lot:	Block:	Zoning:	IM	PDD:	0	SUP:
Historic Dist:	Consv Dist:	Pro Park:	0	Req Park:	0	Park Agmt: N
Dwlg Units: 0	Stories: 1	Occ Code:	B1	Lot Area:	0	Total Area: 0
Type Const:	Sprinkler:	Occ Load:		Alcohol:	N	Dance Floor: N

Remarks: SAME USE
 This CO includes a petroleum product storage and wholesale use with 21 tanks see building permit from 1957. This CO does not mean that the operator is in compliance with the Fire code and other city codes.

Zalda Basora, Building Official

Development Services Department | Building Inspection Division | 214/948-4480 | www.dallascityhall.com



BDA 101-070

BDA101-068
069, & 70
Attach F
Pg 17



CITY OF DALLAS

BDA 101-068
069, & 070
Attach F
Pg 18

September 23, 2010

Art Anderson
Winstead, PC
5400 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270

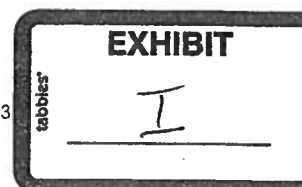
Certified Mail # 7009 0960 0000 9572 5577

Re: Buckley Oil Company Certificate of Occupancy Application Nos. 1008021063
and 1008021064 (the "applications")

Dear Mr. Anderson:

We have completed the initial review of the applications. The "warehouse" and "office/showroom/warehouse" uses referenced in the applications suggest general non-hazardous activities, which are typically B and S general occupancy classifications under the building and fire code. But other information provided in your applications and plans raise questions about the continued appropriateness of a general occupancy classification versus a hazardous occupancy classification. Thus, pursuant to Dallas City Code Chapter 52, "Administrative Procedures for the Construction Codes," Section 306.1, we require the following additional information to continue processing the applications:

1. A land use statement for each building site (1803, 1809, and 1811 Rock Island Street) that identifies all uses and activities, including what appears to be a fuel dispensing station on one of the building sites. Please be specific and include information about the mixing, blending, storage, or manufacturing of any chemicals or other substances and identify each chemical or substance and its common purpose. Please identify the locations and amount of area dedicated to mixing, blending, manufacturing, or storage of any chemicals or other substances.
2. Two scaled site plans for each building site (1803, 1809, and 1811 Rock Island Street) that include:
 - (a) A delineation of the fire lanes.
 - (b) The location of the fire hydrants in relation to structures.
 - (c) A label for each shed or roofed structure, e.g. the main address plus building 1, 2, 3, etc.
 - (d) The square footage of each shed or roofed structure.
 - (e) The number of stories of each shed or roofed structure.



Letter to Art Anderson
September 23, 2010
Page 2 of 3

- (f) The height of each shed or roofed structure.

Also, the following comments on your plans imply that storage is occurring underneath roofed areas:

- "New Building: Trucked Product Offload with piping to AST's."
- "Grease in 20-Gallon Kegs & 5-Gallon Pails."
- "Lubricating Oils Drums."
- "Full Drum staging area."
- "Drummed Products: Miscellaneous Additives and TCE."
- "Waste Storage: 275 Gallon T and 500-Gallon AST."
- "Approx. 40X50 Locked Shed area with small containers."
- "Empty Drums and Drummed Products in Shed."

Please provide the following additional information on your plans for each item quoted above:

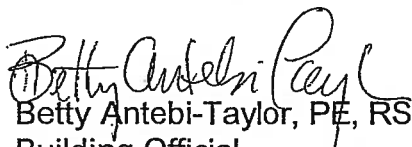
1. Label the uses occurring in or underneath each shed or roofed structure.
2. List the materials stored or used in or underneath each shed or roofed structure, including:
 - (a) Chemical or substance and/or market names for each.
 - (b) Classifications for each chemical or substance: whether hazardous or not hazardous. Please be specific about the physical and/or health hazard or state that the material is neither a physical or health hazard.
 - (c) Aggregate quantity of each chemical or substance.
 - (d) Typical unit container sizes.
 - (e) Chemicals or substances that are piped under roofed structures.
 - (f) Total volume of piping underneath a roofed structure or in a building. The total volume of piping underneath a roofed structure or in a building is considered to be all of the piping measured beginning at the first point in which each pipe enters the building or first extends underneath the horizontal projection of the roof above and includes the entire length of piping. Total volume of piping includes any vessels into which chemicals or other substances are dispensed and stored underneath a roofed structure or in a building.

Letter to Art Anderson
September 23, 2010
Page 3 of 3

Please provide the information requested before the 30th day after the date of this letter as the applications shall expire and be void *ab initio* if Buckley Oil takes no action within this time. See Dallas City Code Chapter 52, "Administrative Procedures for the Construction Codes," Section 306.4.2.

Additionally, any illegal or hazardous conditions on these building sites do not have nonconforming rights and must be satisfactorily addressed in accordance with the Dallas Development Code and the Dallas Building Construction Codes (including the Dallas Fire Code) before certificates of occupancy may be issued.

Sincerely,



Betty Antebi-Taylor, PE, RS
Building Official

Building Inspection

Sustainable Construction and Development Department

c: Larry Holmes, Assistant Building Official
Phil Sikes, Assistant Building Official



RESPONSIBLE DISTRIBUTION VERIFICATION

As of July 30, 2012

Congratulations! NACD is pleased to announce that the following Members and Chemical Handler Affiliates have successfully passed NACD's 4th cycle (2010-2012) on-site Responsible Distribution Verification, demonstrating their commitment to the implementation of Responsible Distribution's environmental, health, safety, and security requirements.

A.G. Layne, Inc.
 Accron, LP
 Acid Products Co., Inc.
 Advanced Chemical Concepts, Inc.
 Advanced Chemical Logistics, Ltd.
 Alchem Chemical Company
 Allied Universal Corporation
 Amber Chemical, Inc.
 American International Chemical, Inc.
 Americhem Sales Corporation
 Amware Logistics Services dba NKM Warehousing*
 Andes Chemical Corporation
 ARC Products, Inc.
 Archway Sales Inc.
 Argo Chemical, Inc.
 Astro Chemicals, Inc.
 B.H. Roettker Co., Inc.
 Barton Solvents, Inc.
 Basstech International LLC
 Bedford Specialty Sales, Inc.
 BHS Marketing LLC
 Bison Laboratories, Inc.
 BKM Resources, Inc. - Global Chemicals
 Boehle Chemicals, Inc.
 Borden & Remington Corp.
 Bossco Industries, Inc.
 Brainerd Chemical Company, Inc.
 Brenntag North America, Inc.
 Brown Chemical Co., Inc.
 Buckley Oil Company
 Cadence Chemical Corporation
 Cal-Chem
 Callahan Company
 Carus Corporation
 Cascade Columbia Distribution
 CCC
 Chautauqua Metal Finishing Supply
 Chem One Ltd.
 Chem/Serv, Inc.
 CheMarCo, Inc.
 Chemical Distributors Inc.
 Chemical Distributors, Inc.
 Chemical Solvents, Inc.
 Chemicals, Inc. USA, a Chemgroup Co.
 Chemisphere Corporation

Chem-Materials Co., Inc.
 Chemsolv, Inc.
 Chem-Way Corporation
 Chou Enterprises Ltd
 Coast Southwest, Inc.
 Colonial Chemical Solutions, Inc.
 Columbus Chemical Industries, Inc.
 Conchemco, Ltd.
 Cone Solvents, Inc.
 Connell Bros. Company, Ltd.
 CSD/Startex Distribution
 D & F Distributing, Inc.
 D.B. Becker Company, Inc.
 D.N. Lukens, Inc.
 Dakota Distributing, LP
 Dar-Tech, Inc.
 Deeks & Company, Inc. (Ga)
 DeWolf Chemical, Inc. and its Subsidiary,
 Glenn Corporation
 Dorsett & Jackson, Inc.
 DPC Industries, Inc.
 Dunleary, Inc.
 Durr Marketing Associates, Inc.
 E.M. Sullivan Associates, Inc.
 E.W. Kaufmann Co.
 Edson Industries
 Emco Chemical Distributors, Inc.
 Essential Ingredients, Inc.
 Expo Chemical Co., Inc.
 FBC Chemical Corp.
 Fenway Materials, Inc.
 Fitz Chem Corporation
 G.J. Chemical Co., Inc.
 G.R. O'Shea Company
 Gallade Chemical, Inc.
 Gehring-Montgomery, Inc.
 George S. Coyne Chemical Co., Inc.
 Gilbert & Jones Company Inc.
 Gillen Company, LLC
 Greenchem Industries LLC
 Gulf Coast Chemical, LLC
 Hall Technologies, Inc.
 Harcros Chemicals, Inc.
 Harris & Ford, LLC
 Harry W. Gaffney & Co., Inc.
 Harwick Standard Distribution Corp.

Hawk Chemical Company, Inc.
 Helm U.S. Corporation
 Holland Applied Technologies
 Horn
 Houghton Chemical Corporation
 Hubbard-Hall Inc.
 Hydrite Chemical Co.
 Ideal Chemical & Supply Co.
 Independent Chemical Corporation
 Industrial Chemicals Corp.
 Industrial Chemicals, Inc.
 Industrial Chemicals, Inc.
 Inland Star Distribution Centers, Inc.*
 International Distribution Corporation*
 Interstate Chemical Co., Inc.
 J. Drasner & Co., Inc.
 J. Tech Sales, LLC
 J.H. Calo Company, Inc.
 Jensen-Souders & Associates, Inc.*
 JR Hess Company
 K.A. Steel Chemicals, Inc.
 K.G. International, Inc.
 KIC Chemicals, Inc.
 KODA Distribution Group
 Kohl Marketing, Inc.
 Kraft Chemical Company
 K-Solv, LP
 Lacy's Express, Inc.*
 Lidochem, Inc.
 Lincoln Fine Ingredients
 Linden Bulk Transportation
 Linden Warehouse and Distribution Co., Inc.*
 Lintech International
 Lipscomb Chemical Co., Inc.
 Lowe Chemical Co.
 M Chemical Company, Inc.
 Majemac Enterprises Inc.
 Maroon Incorporated
 Maryland Chemical Company, Inc.
 Matteson-Ridolfi, Inc.
 Mays Chemical Company, Inc.
 McCullough & Associates
 Mehaffey & Daigle, Inc.
 Miles Chemical Company
 Mobile Solvent & Supply, Inc.
 Mutchler Inc., Pharmaceutical Ingredients



New England Resins & Pigments Corp.
NorFalco Inc.
Norman, Fox & Co.
North Industrial Chemicals, Inc.
Ohio Chemical Services, Inc.
Pacific Coast Chemicals Co.
Palmer Holland, Inc.
Parchem - Fine & Specialty Chemicals
PhibroChem
Pochteca Materias Primas S.A. de C.V.
Pride Solvents & Chemical Co., Inc.
Producers Chemical Company
PVS-Nolwood Chemicals, Inc.
Quaker City Chemicals, Inc.
R.E. Carroll, Inc.
Radchem Products, Inc.
Raw Materials Corporation
Reagent Chemical & Research, Inc.
Research Solutions
Rierden Chemical & Trading Company
Riverside Chemical Co., Inc.
Roberts Chemical Co., Inc.
Ross Organic Specialty Sales, Inc.
Rowell Chemical Corp.
Royale Pigments and Chemicals, Inc.
Sagar Enterprises, Inc.
Sal Chemical
Schibley Chemical Company, Inc.
Sea-Land Chemical Co.
Seeler Industries, Inc.
Shepard Bros. Inc.
Slack Chemical Co., Inc.
SolvChem, Inc.
Specialty Chemical Sales, Inc.
Stockton Sales, Inc.
Store+Deliver+Logistics Pte Ltd.*
Superior Materials, Inc.
Superior Solvents and Chemicals
Surpass Chemical Co., Inc.
T.H. Hilson Company
Tanner Industries, Inc.
Tarr, LLC
Tavco Chemicals, Inc.
TCR Industries
Technical Products, Inc.
Thatcher Company
The Cary Company
The M.F. Cachat Company
The Meadows Group, LLC
The Plaza Group
Third Coast Terminals, Inc.
Thornley Company, Inc.
Tilley Chemical Co., Inc.
TLC Ingredients, Inc.
TMC Materials, Inc.

Trans Western Chemicals, Inc
TransChem, Inc.
Transchemical Inc.
Tri-iso, Inc.
TRInternational, Inc.
U.S. Chemicals, LLC
Univar
USA Container Co. Inc.*
Valley Solvents & Chemicals
Van Horn, Metz & Co., Inc.
Veckridge Chemical Company, Inc.


Viking Chemical Company
Vivion, Inc.
Walsh & Associates, Inc.
Wausau Chemical Corporation
Webb Chemical Service Corp.
Weber Logistics*
Whitaker Oil Company
William B. Tabler Co., Inc.
Wilson Industrial Sales Co., Inc.
World Metal, LLC

CHEMICAL

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- Landstar Transportation Services

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- Truck to Drum/Tote




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A

APPLICATION/APPEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 101-070

Data Relative to Subject Property:

Date: 6-3-11

Location address: 1803 Rock Island St. Zoning District: PD 784

Lot No.: Part 16 Block No.: 73/7342 Acreage: 0.52 Census Tract: 0033.20

Street Frontage (in Feet): 1) 90' 2) _____ 3) _____ 4) _____ 5) _____

To the Honorable Board of Adjustment :

Owner of Property/or Principal: Buckley Oil Company

Applicant: Tommy Mann, Winstead PC Telephone: (214) 745-5724

Mailing Address: 1201 Elm St., suite 5400 Zip Code: 75270

Represented by: _____ Telephone: _____

Mailing Address: _____ Zip Code: _____

Affirm that a request has been made for a Variance __, or Special Exception __, of Appeal of a building official decision to deny an application for a new certificate occupancy. The decision was received on May 20, 2011.

Application is now made to the Honorable Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described request for the following reason:

The owner has been operating on the property for several years in accordance with all federal, state and local government and regulatory agencies. Owner does not waive any legal rights by the filing of this appeal.

Note to Applicant: If the relief requested in this application is granted by the Board of Adjustment, said permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

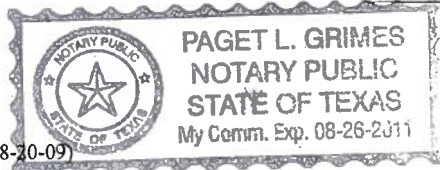
Respectfully submitted: Tommy Mann _____
Applicant's name printed Applicant's signature

Affidavit

Before me the undersigned on this day personally appeared Tommy Mann who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

Affiant (Applicant's signature)

Subscribed and sworn to before me this 2nd day of June, 2011



Notary Public in and for Dallas County, Texas

MEMORANDUM OF
ACTION TAKEN BY THE
BOARD OF ADJUSTMENT

Date of Hearing _____

Appeal was--Granted OR Denied

Remarks _____

Chairman

Building Official's Report

I hereby certify that TOMMY MANN

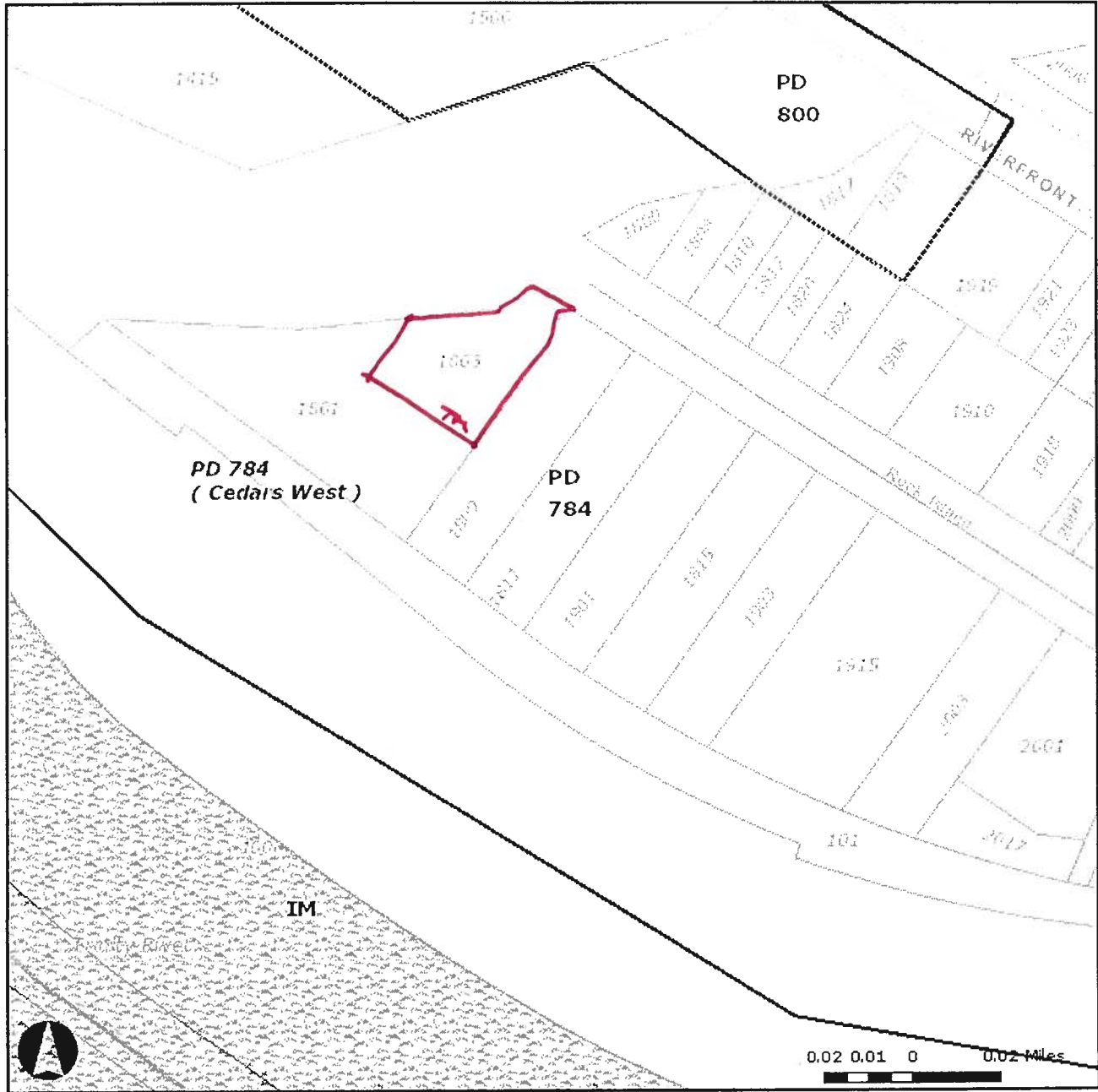
did submit a request to appeal the decision of the administrative official
at 1803 Rock Island Street

BDA101-070. Application of Tommy Mann to appeal the decision of the administrative official at 1803 Rock Island Street. This property is more fully described as part of Lot 16 in city block 73/7342 and is zoned PD-784, which requires that the building official deny an application for a certificate of occupancy if the building official determines that the certificate of occupancy would be issued on the basis of false, incomplete, or incorrect information; the use is being operated in violation of the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations. The applicant proposes to appeal the decision of an administrative official to deny an application for a certificate of occupancy.

Sincerely,

Batsheba Antebi
Batsheba Antebi, Building Official

City of Dallas Zoning



City Boundaries



County



Certified Parcels



DISD Sites



Council Districts



Waterways



Parks



SUP



Dry Overlay



Historic Overlay



Historic Subdistricts



NSO Overlay



NSO Subdistricts



PD Subdistricts



PD193 Oak Lawn



PDS Subdistricts



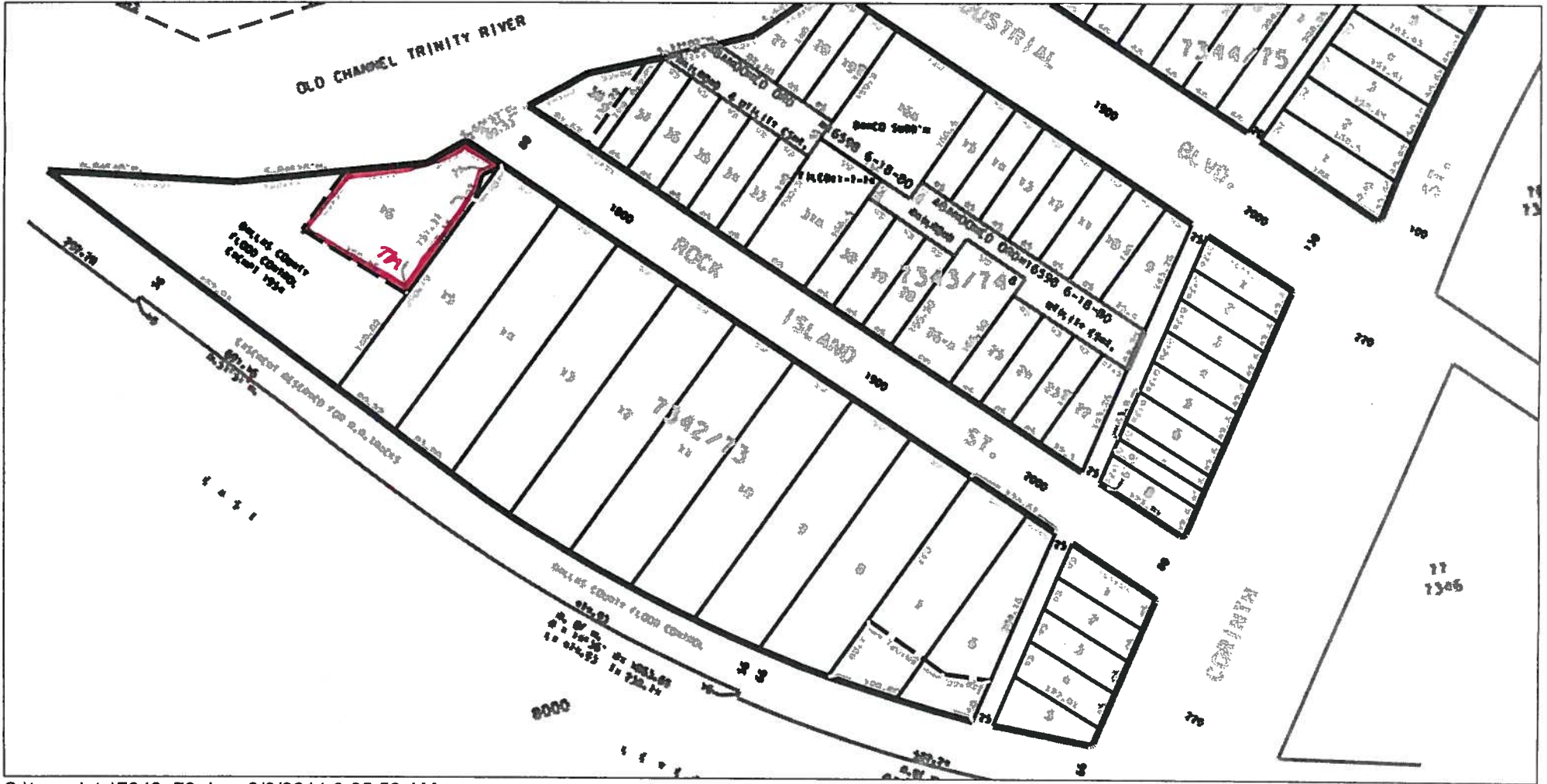
Base Zoning



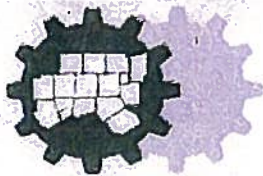
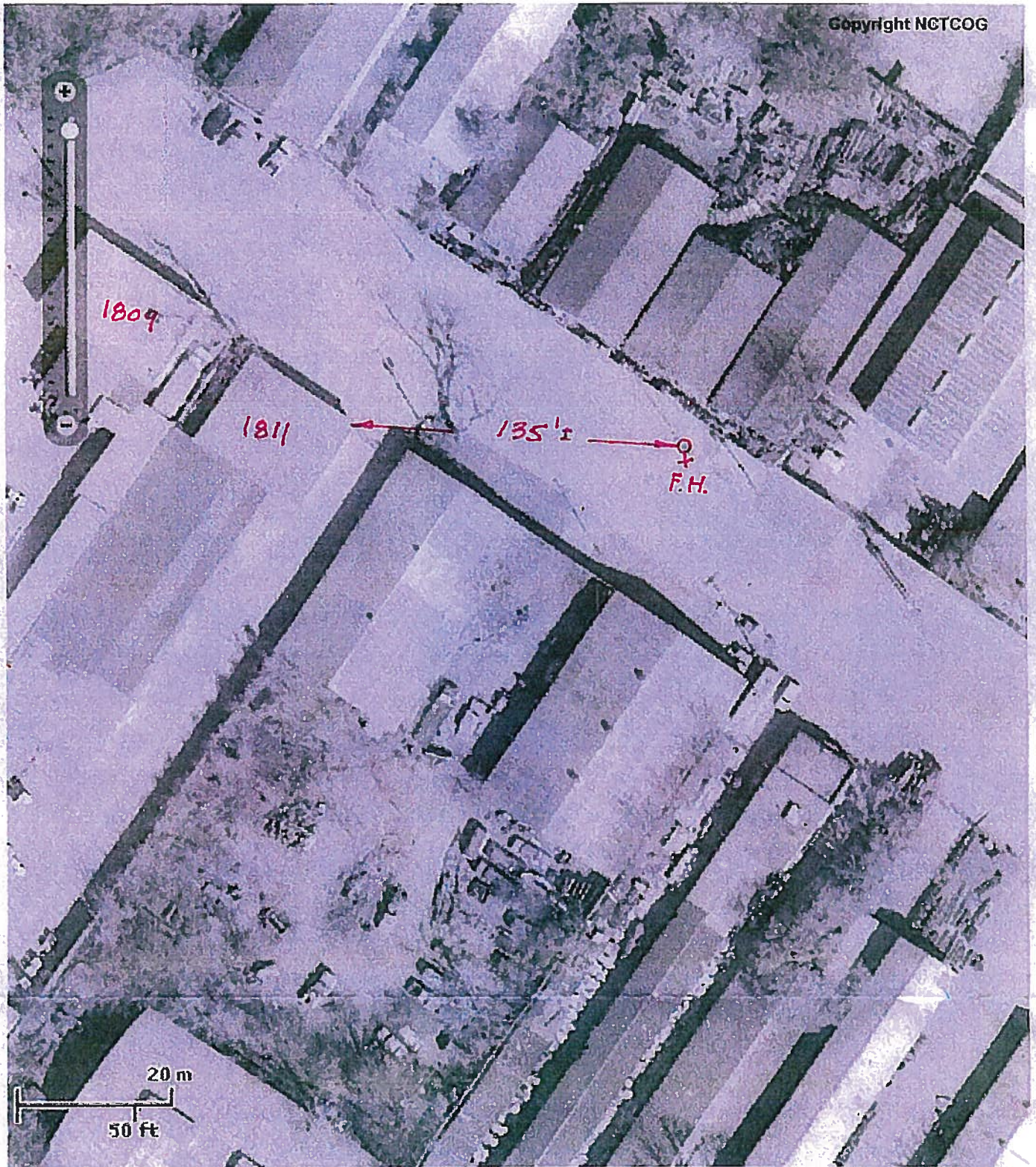
Pedestrian Overlay



Environmental Corridors



C:\tax_plats\7342_73.dgn 6/3/2011 9:05:59 AM



North Central Texas
Council of Governments

My Map

DFWMaps.com

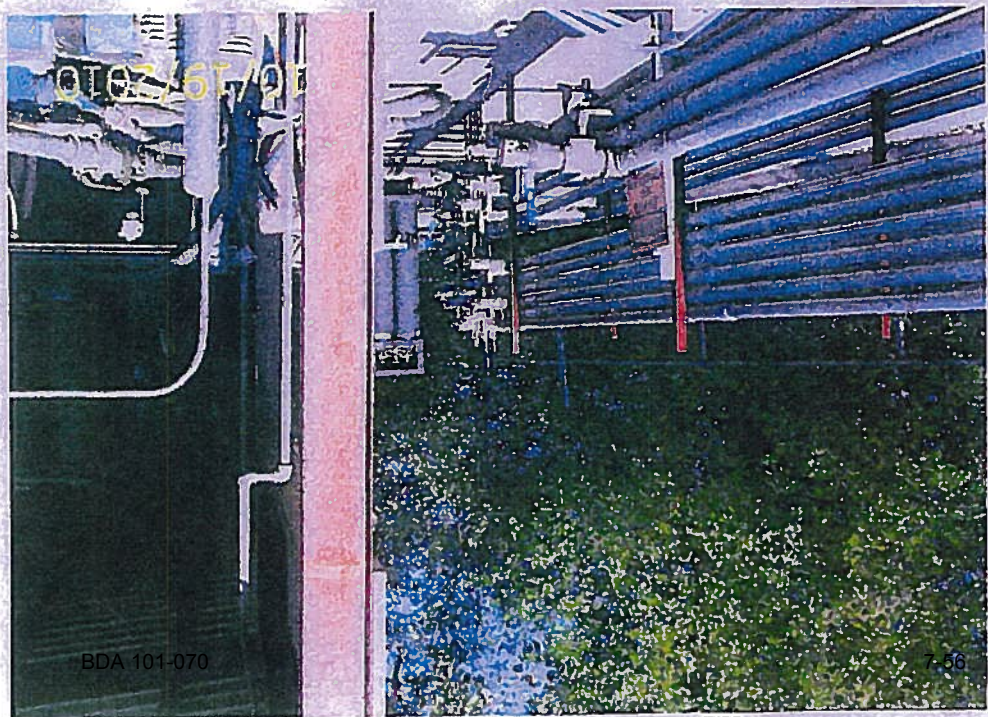
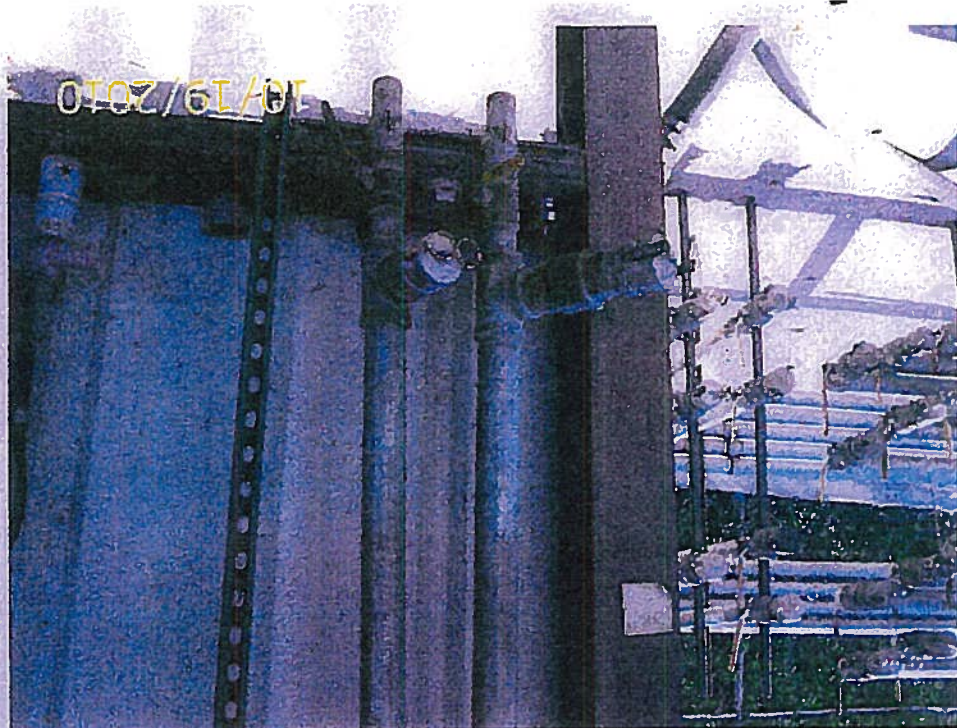
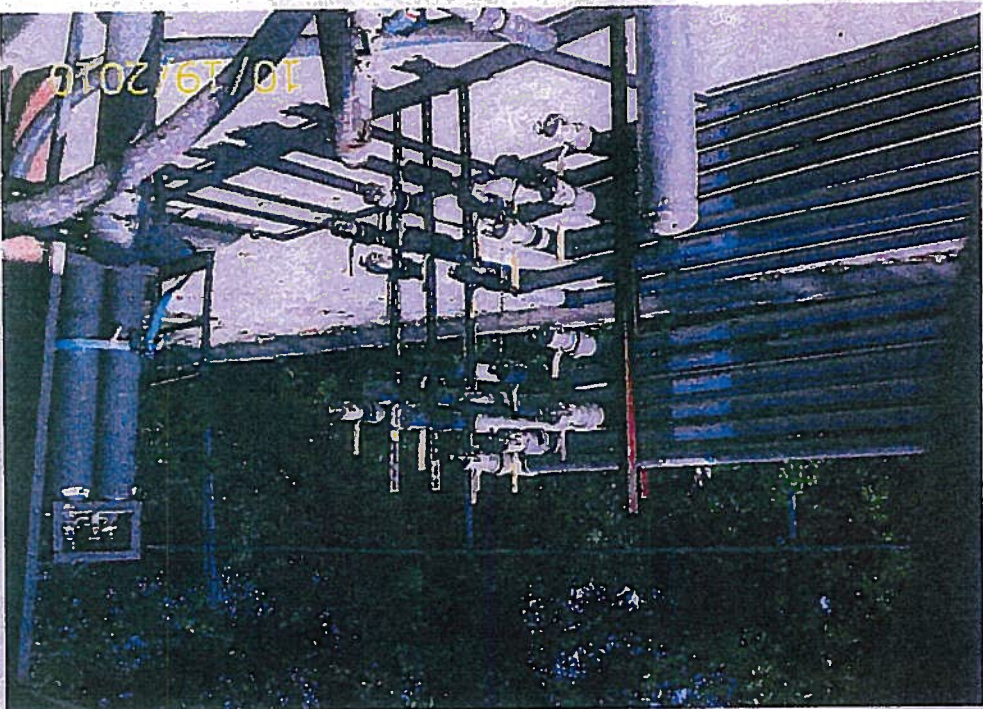
<http://www.dfwmaps.com/#>

DISCLAIMER

This data has been compiled for NCTCOG. Various official and unofficial sources were used to gather this information. Every effort was made to ensure the accuracy of this data, however, no guarantee is given or implied as to the accuracy of said data.



Fire Hydrant approx. 135' from 1811 Rock Island St.



2

Attachment 3

1



5/



6/

Attachment 4

Attachments 3 & 4

No continuous piping goes into or thru Covered area "F". The pipeline ends as shown in Pictures 2, 4, 6 & 7. There are 2 x 2" pipelines under roof of Covered area "F" (see pics 1,3 & 5) and can only be used (1 line at a time) when connected to the pump by hose connecting at the end of pipeline to the pump & a hose connection from the pump to the pipeline (pic. 1 & 3)



7/
7-57



AFFIDAVIT

Appeal # BDA 101-070

I, Buckley Oil Company, Owner of the subject property
at (address): 1809 Rock Island Street

Authorize (Applicant's name) Tommy Mann, Winstead PC

To pursue an appeal to the City of Dallas Zoning Board of Adjustment for the following request(s)

 Variance (specify below)

 Special Exception (specify below)

X Other Appeal (specify below)

Appeal of building official's decision to revoke the
existing certificate of occupancy

BUCKLEY OIL Co R.E. Dodson 5/31/11

Print name of property owner

Signature of property owner

Date

Before me the undersigned on the day of personally appeared R.E. Dodson

Who on his/her oath certifies that the above statements are true and correct to his/her best knowledge.

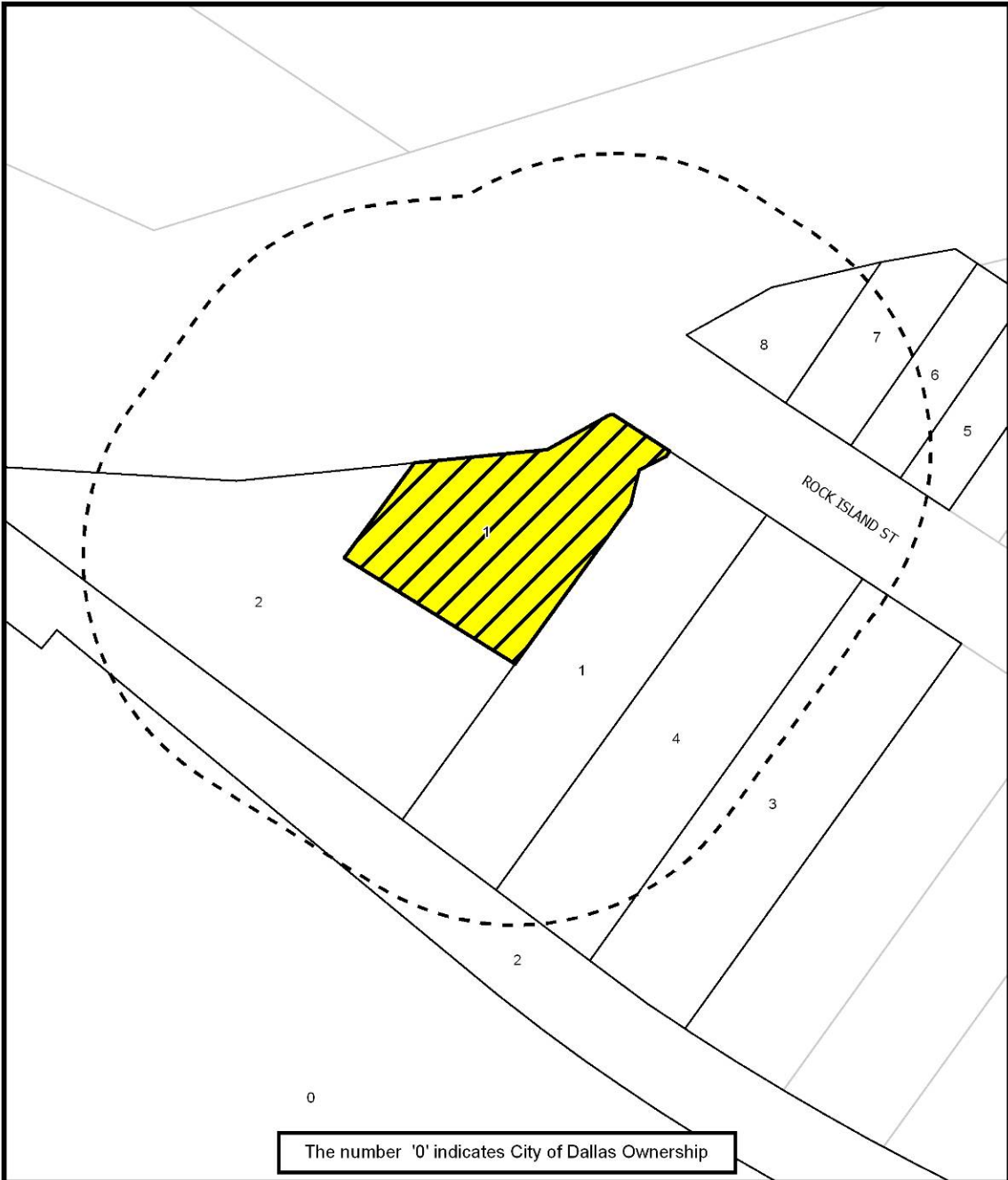
Subscribed and sworn to before me this 31st day of May, 2011

Cindy L. Hults-Massey

Notary Public for Dallas County, Texas

Commission expires on 4-01-15





 1:1,200	<h2 style="text-align: center;">NOTIFICATION</h2> <table border="1" style="width: 100%;"> <tr> <td style="text-align: center;">200'</td> <td>AREA OF NOTIFICATION</td> </tr> <tr> <td style="text-align: center;">8</td> <td>NUMBER OF PROPERTY OWNERS NOTIFIED</td> </tr> </table>	200'	AREA OF NOTIFICATION	8	NUMBER OF PROPERTY OWNERS NOTIFIED	Case no: BDA101-070 Date: 7/26/2012
200'	AREA OF NOTIFICATION					
8	NUMBER OF PROPERTY OWNERS NOTIFIED					

Notification List of Property Owners

BDA101-070

8 Property Owners Notified

<i>Label #</i>	<i>Address</i>	<i>Owner</i>
1	1809 ROCK ISLAND ST	BUCKLEY OIL CO
2	101 CORINTH ST	DALLAS COUNTY FLOOD CONTROL DISTRICT
3	1901 ROCK ISLAND ST	JOHNSON REALTY CO
4	1811 ROCK ISLAND ST	ROSEBUD HOLDINGS LLC
5	1812 ROCK ISLAND ST	SHERARD MILLIGAN F & MARCELLE MOUNT
6	1810 ROCK ISLAND ST	SHERARD MILLIGAN
7	1808 ROCK ISLAND ST	HML HOLDINGS LLC TEXAS LIMITED LIABILITY
8	1800 ROCK ISLAND ST	ROCKALONG LLC